

Exhibit 4

Page 1

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil Action No. 3:12-cv-04947-MAS-LHG
-----x

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION,
an unincorporated association; NATIONAL
BASKETBALL ASSOCIATION, a joint venture;
NATIONAL FOOTBALL LEAGUE, an unincorporated
association; NATIONAL HOCKEY LEAGUE, an
unincorporated association; and OFFICE OF
THE COMMISSIONER OF BASEBALL, an
unincorporated association, doing business
as Major League Baseball,

Plaintiffs,

-against-

CHRISTOPHER J. CHRISTIE, Governor of the
State of New Jersey; DAVID L. REBUCK,
Director of the New Jersey Division of
Gaming Enforcement and Assistant Attorney
General of the State of New Jersey; and
FRANK ZANZUCCI, Executive Director of
the New Jersey Racing Commission,

Defendants.
-----x

200 Park Avenue
New York, New York

November 6, 2012
9:45 a.m.

30(b)(6) DEPOSITION OF
OFFICE OF THE COMMISSIONER OF BASEBALL
and its Representative
THOMAS OSTERTAG

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30(b)(6) DEPOSITION of OFFICE OF
THE COMMISSIONER OF BASEBALL and its
Representative THOMAS OSTERTAG, taken
by the Defendants, pursuant to Notice,
held at the aforementioned time and
place, before Sherri Flagg, a Registered
Professional Reporter, Certified LiveNote
Reporter, and Notary Public.

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THOMAS OSTERTAG,

4

first duly sworn/affirmed,

5

was examined and testified as

6

follows:

7

EXAMINATION BY

8

MR. HOFFMAN:

9

Q. Good morning, Mr. Ostertag. How

10

are you?

11

A. Good.

12

Q. My name is Matt Hoffman. I am
counsel for Christopher Christie and the State
of New Jersey.

13

Can we get your full name for the
record, please.

14

A. Thomas Ostertag.

15

Q. And I understand you work for the
Office of the Commissioner of Baseball; is
that correct?

16

A. Yes.

17

Q. Now, throughout the deposition
today, I may be referring to Major League
Baseball or MLB. Is it your understanding
that when I use those terms, I'll be referring

18

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1 - T. OSTERTAG -
2 to the Office of the Commissioner of Baseball?
3 Is that okay with you?

4 A. That's fine with me.

5 Q. All right. Mr. Ostertag, what is
6 your current position at Major League
7 Baseball?

8 A. Senior vice president and general
9 counsel.

10 Q. And can you briefly describe for me
11 your job responsibilities.

12 A. I have responsibility for legal
13 work in the Commissioner's office other than
14 labor, employment matters, employee relations,
15 that type of thing.

16 Q. And as part of your job
17 responsibilities, are you responsible for
18 gambling education to the employees of Major
19 League Baseball?

20 MR. MISHKIN: Object to the form of
21 the question. You can answer.

22 A. I wouldn't say gambling education.
23 Gambling and integrity questions come to me,
24 but the education part, I don't think I could
25 say exactly that.

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1 - T. OSTERTAG -
2 supervise responsible for doing any research
3 on gambling activities?

4 A. I'm not sure what you mean by
5 "research on gambling activities." If you're
6 talking about the possibility of gamblers
7 affecting our game, again, that's more the
8 primary responsibility of our department of
9 investigations.

10 Q. What about conducting any surveys,
11 studies, analyses or either legal or illegal
12 gambling? Is that something you would be
13 responsible for, or is that again something
14 that the department of investigations would be
15 responsible for?

16 MR. MISHKIN: I object to the form
17 of the question. If you have the
18 question in mind, you can answer it.

19 A. I'm not sure I understand it
20 either. Maybe you could try a different
21 wording of that.

22 Q. Well, let me ask it this way: Have
23 you or your department conducted any survey/
24 analyses/studies of gambling in let's say the
25 last ten years?

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1 - T. OSTERTAG -
2 Q. Okay. When you say gambling and
3 integrity questions, can you describe for me
4 what your job entails when it comes to those
5 issues?

6 A. When a question arises as far as
7 interpretation of our gambling rules and
8 policies, they normally come to me.

9 Q. Are you responsible for any
10 antigambling enforcement activities?

11 MR. MISHKIN: Object to the form of
12 the question. But you can answer.

13 A. We have a department of
14 investigations, we also have a security
15 department. It's more centrally within their
16 responsibilities.

17 Q. For example, when a gambling
18 incident arises, would you be responsible for
19 monitoring what your department investigation
20 does in terms of enforcement activities?

21 A. Depending on exactly what happened,
22 I would be clearly in communication with them,
23 or there may be some situations where they
24 would just handle it themselves.

25 Q. Now, are you or somebody that you

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1 - T. OSTERTAG -
2 A. We have -- we have a lot of
3 experience in our sport, not recent with
4 gambling; and we consider that to be, in a
5 way, our ongoing study and survey because it
6 is still, in our minds, very important history
7 and in some ways very recent. We've had as
8 you know, a gambling scandal involving the
9 World Series, we had one involving one of the
10 greatest players that ever played the game.
11 And we know all about gambling, thank you.

12 Q. We'll come back to those specific
13 incidents a little bit later.

14 Now, Mr. Ostertag, do you work at
15 the Major League Baseball headquarters here in
16 New York?

17 A. Yes.

18 Q. How long have you been in your
19 current role of senior vice president and
20 general counsel?

21 A. I've held that title since 2000.

22 Q. Do you know who had the job of
23 general counsel before you did?

24 A. I think I do know who had the title
25 before I had that, yes.

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Q. And who would that be?

A. I believe his name was Jim Holland.

He had it very, very briefly.

Q. And do you know who the general counsel was before Mr. Holland?

A. Yes.

Q. And who was he?

A. Ed Durso.

Q. Can you spell that last name.

A. D-U-R-S-O.

Q. And, Mr. Ostertag, do you report directly to the Commissioner, Mr. Selig?

A. Yes.

Q. Now, you mentioned in 2000 you became general counsel of Major League Baseball.

A. No, I did not say that.

Q. Oh, I'm sorry. When did you become general counsel of Major League Baseball?

A. 1990.

Q. Now, Mr. Holland and Mr. Durso you mentioned before. Were there multiple general counsels for Major League Baseball? What was their role?

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- T. OSTERTAG -

A. Well, the Pete Rose incident occurred in 1989.

Q. Before you became assistant counsel, did you have any other previous roles at Major League Baseball?

A. Well, I joined in 1985 as a full-time employee. I had been an intern six years before that.

Q. Just real briefly, Mr. Ostertag, can you tell us your educational background starting with college?

A. I attended Dartmouth College and the University of Virginia Law School.

Q. Do you have any special training on gambling?

A. Before coming to baseball?

Q. You can start there. Before coming to baseball, did you have any training on gambling?

A. No.

Q. Any formal training regarding gambling after you arrived in 1985?

A. I'm not sure there is such a thing, but I certainly didn't have any formal

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A. There was never more than one general counsel in the Commissioner's office. What I said was Jim Holland had the title very briefly, I think literally for a few months; and before that it was Ed Durso. He had the title going back to 1985.

Q. Okay. Prior to you becoming general counsel in 1990, what was your previous role with Major League Baseball, if you had one?

A. I joined the office in 1985 as -- my title at the time was I believe assistant counsel. And I had many, many responsibilities in both the Commissioner's office and then quickly after also Major League Baseball properties.

Q. In your role as assisting counsel, were you involved in, as you put it, gambling and integrity issues?

A. If anything arose during that time, I would have been involved in it probably. Probably.

Q. Do you recall anything arising during that time period between 1985 and 1990?

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training on gambling. There might be for people that -- those who work in our department of investigations, and they had that kind of training as part of their careers and that's, you know, what they do. But for lawyers, I'm not sure what it even means.

Q. Now, have you personally conducted any research on gambling?

A. I'd have to say yes.

Q. What kind of research have you conducted on gambling?

A. At various times I've looked back over baseball's experience with gambling in our files.

Q. Have you published any papers on gambling?

A. I actually did. I actually did.

Q. And what was that paper and when was it published?

A. It was a Law Review article in the early 1990s.

Q. Was that the Law Review article at the University of Virginia?

A. No.

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Q. Do you know which law review it was in?

A. I'm quite positive it was the Seton Hall Law Journal or a name like that.

Q. And do you recall the name of the article that you wrote for the Seton Hall Law Journal?

A. I could not tell you the complete name of the article, no.

Q. Mr. Ostertag, have you been deposed before?

A. Yes.

Q. Approximately how many times?

A. I would say somewhere between ten and twenty times.

Q. Okay. Now, were those depositions as a representative of Major League Baseball?

MR. MISHKIN: Well, object. You mean formally?

Q. Were those depositions of you in your role as an employee of Major League Baseball?

A. I believe all of them, yes. I can't think of any that weren't.

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don't recall for sure.

Q. Mr. Ostertag, have you testified in court?

A. Yes.

Q. Approximately how many times?

A. Three.

Q. And, again, was that as an employee or representative of Major League Baseball that you testified in court?

A. Yes.

Q. Were any of the times you testified in court related to any gambling issues?

A. I don't believe so.

Q. Now, Mr. Ostertag, you understand you're here today as a representative of Major League Baseball to testify about certain topics?

A. Yes.

Q. I'd like to show you what we'll mark as Major League Baseball Exhibit 1. It's the 30(b)(6) notice.

(Exhibit 1: 30(b)(6) Notice of Deposition, was marked for identification.)

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Q. Were any of the depositions related to any gambling issues?

A. I think at least one was.

Q. Can you tell me what that case was about?

A. I recall being deposed in one of the lawsuits that arose out of the George Steinbrenner matter.

Q. And when you say "George Steinbrenner matter," what are you referring to?

A. He paid money to a gambler for information on Dave Winfield, and that occurred I believe in 1989 or '90. And the Commissioner took disciplinary action against George Steinbrenner or, to be more accurate, there was an agreement by which George Steinbrenner accepted discipline and thereafter litigation arose.

Q. Was this litigation initiated by Mr. Steinbrenner?

A. There were three cases; at least two of them were not formally brought by Mr. Steinbrenner. The third may have been. I

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BY MR. HOFFMAN (continuing):

Q. Do you want to take a minute and review.

A. (Examining document.)

Q. Now, Mr. Ostertag, are you familiar with this notice?

A. I read it, yes.

Q. Have you seen it before today?

A. Yes.

Q. Did you review this notice in preparation for today's deposition?

MR. MISHKIN: You can answer, of course, excluding discussions with counsel.

A. I don't believe I read this -- I don't recall reading this in preparation for today's deposition, excluding discussions with counsel.

Q. Are you prepared to testify as Major League Baseball's designee on all the topics listed in this notice?

A. Yes.

Q. And you understand that this means you are here to testify about information

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known or reasonably available to Major League Baseball on these topics?

A. Yes.

Q. What did you do today to -- what did you do to prepare for today's deposition?

MR. MISHKIN: Excluding discussions with counsel; is that correct?

MR. HOFFMAN: That's correct.

A. I read a couple of documents this morning, and I don't know that I did anything else to prepare.

Q. Did you meet with counsel?

A. Yes.

Q. For how long?

MR. MISHKIN: Objection. I instruct the witness not to answer. I think that intrudes upon the privilege.

Q. Are you going to take his instruction?

A. Yes.

Q. Did you speak to anyone other than counsel in preparation for today's deposition?

A. I don't believe I did, other than to tell people I was being deposed today.

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A. William D. Cox.

Q. And can you tell me about -- tell me a little bit about what that case was about.

A. The Commissioner at the time received information that William D. Cox had been gambling on baseball and called him in for a meeting or a hearing so that the Commissioner could learn about the facts of the matter. And Mr. Cox declined to come in and was declared permanently ineligible.

Q. Which Major League Baseball club did Mr. Cox own?

A. The Philadelphia Phillies. I don't know that he owned the whole team, but he was an owner of the Philadelphia Phillies.

Q. Okay. When did this incident occur?

A. 1943.

Q. And I believe you mentioned the Commissioner determined that Mr. Cox gambled on baseball. Did he gamble on -- did he gamble on the Philadelphia Phillies?

A. The way the decision is written, it

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Q. Okay. Did you speak to Commissioner Selig?

A. Yeah. He's one of the people I told I was being deposed today.

Q. Did you talk about the substance of today's deposition with Commissioner Selig?

A. I don't think so.

Q. Did you review any documents in preparation for today's deposition?

A. I read a couple this morning.

Q. Okay. Can you tell me what those documents were?

A. Yes. I read -- there was a document that was a decision involving a former owner who was disciplined for gambling and another document that was a decision involving a former player who was disciplined for gambling.

Q. Okay. Did you bring those documents with you here today?

A. No.

Q. The decision involving the former owner, can you tell me who was the former owner?

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strongly implies that he did.

Q. Do you know whether he gambled for the Phillies? In other words, did he bet money that the Phillies would win or did he ever bet against the Philadelphia Phillies?

A. I don't think the decision had any indication that he ever bet against the Phillies.

Q. And then I think you mentioned a second document involving a decision regarding a former player?

A. Yes.

Q. Can you tell me who that former player was?

A. Denny McLain.

Q. And can you tell me what the situation was there and what the decision was?

A. He was -- he thought he was involved in bookmaking, "he" meaning McLain, thought he was involved in bookmaking. There was evidence that he may have been actually duped and was just a stooge and was instead a victim. And the Commissioner suspended him for a finite period of time.

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Q. When you say he was duped and was a victim, can you explain that to me?

A. I don't think the decision had anything more that would be helpful as an explanation. But it certainly implied that he was involved with people he thought -- actually it said he thought he owned part of a business, and I think the Commissioner determined and maybe he determined he didn't own part of that business, that instead he was a victim.

Q. Did Mr. McLain gamble on sports?

A. The decision, I don't believe, indicated one way or the other.

Q. Okay. So --

A. I read it quickly. I don't think it said one way or the other.

Q. Then I would presume if the decision didn't say whether he gambled on sports, then we don't know from the decision whether he actually gambled on baseball?

A. It most certainly was not a situation where he gambled on baseball. It may have referred to another sport, but it did

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mean the same thing as sports gambling?

A. I can't think of a difference sitting here today.

Q. Okay. In Major League Baseball's view, does sports gambling include fantasy sports leagues in which there's a payout to the winner?

A. No.

Q. Why not?

A. Fantasy games are an entirely different thing. It clearly does not include that.

Q. Can you explain that to me? How is fantasy sports an entirely different thing from sports gambling?

A. I've never played fantasy sports. My understanding, however, is that you pay a fee to enter a league and you put together your own team with players. You draft players in a pretend sort of way, you put together a team and you see how that team does compared to many, many other people involved in that league.

But my understanding also is that

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- T. OSTERTAG -

not refer to baseball.

Q. When did this incident take place involving Mr. McLain?

A. In or about 1969.

Q. Any other documents that you reviewed today, reviewed in preparation for today's deposition?

A. No, other than, again, discussions with counsel and I recall a document prepared by counsel.

Q. Now, if you look at the 30(b)(6) notice in front of you, you'll notice that a number of these topics refer to sports gambling. In Major League Baseball's view, what constitutes sports gambling?

A. I don't think I've ever heard a precise definition of what constitutes sports gambling.

Q. How would you define "sports gambling"?

A. I would define sports gambling as at least including gambling on games, the results of games, involving sports.

Q. In your mind does sports wagering

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there's no gambling, per se. You don't win an amount of money that's based on your fee, and in many cases there aren't even any fees. MLB.com conducts a sports fantasy league where there are no fees, I understand.

And it's just -- you know, fantasy sports are not illegal. They're not considered gambling under PASPA, they're not considered gambling under the Unlawful Internet Gambling Enforcement Act.

I understand that a federal judge in New Jersey considered this question carefully, wrote an opinion--I actually read that opinion a while back--taking apart the argument that fantasy games were gambling and they just aren't. It's a whole different ball of wax. There's no threat to our sport from fantasy games, none whatsoever.

Q. Okay. We'll come back to fantasy sports.

Now, you would agree with me, Mr. Ostertag, that sports gambling is legal and some is illegal, correct?

MR. MISHKIN: Object to the form of

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the question.

A. If you're referring like Las Vegas, sports gambling is clearly legal in Las Vegas, yes.

Q. And you're aware that illegal sports gambling goes on in this country; are you not?

A. Did you say illegal?

Q. Illegal.

A. Yes.

Q. Now, you mentioned Las Vegas. So one example of legal sports gambling would be someone over 21 placing a bet at a sportsbook in Las Vegas, correct?

A. I don't know the legal age, but somebody certainly can place a sports -- a bet on a sport at a sportsbook in Las Vegas, yes.

Q. And illegal sports gambling would include someone betting with a bookie outside of the state of Nevada, for example?

A. I think that's a valid example, yes.

Q. Now, when I use the term "bookie," that means someone who's illegally taking bets

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could.

Q. If government estimates are that illegal sports gambling comprises a \$380 billion industry, would you have any reason to dispute that number?

MR. MISHKIN: Object to the form of the question.

A. If you put something in front of me that looks like a government document that said that, I can think of no reason I would have to dispute it other than sometimes people get things wrong. It's probably a very hard market to estimate.

MR. HOFFMAN: Why don't we grab the

-- I apologize for the size. We'll go

to a specific page, I promise. But I

wanted to make sure you had the complete

document. We'll mark this as Major

League Baseball Exhibit 2. This is the

National Gambling Impact Study Commission

Report from I believe 1999. I believe

that's correct.

(Exhibit 2: National Gambling

Impact Study Commission Report 1999

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as opposed to a sportsbook in a casino in Nevada. Is that correct?

A. Sounds good to me.

Q. Now, is Major League Baseball aware that there's a substantial illegal gambling market in the United States?

MR. MISHKIN: Object to the form of the question.

A. Clearly we're aware that there is illegal betting going on. You can characterize it, I can characterize it. There's no question there's illegal betting going on.

Q. How would you characterize the scope of illegal gambling or illegal sports gambling in the United States?

A. I myself don't know, but more than I would prefer.

Q. Is Major League Baseball aware that the illegal sports gambling market is larger than the legal sports gambling market in the United States?

A. There are probably people who know how to compare the two. I'm not sure that I

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(#PLAINTIFFS' 00002333-2606), was marked for identification.)

BY MR. HOFFMAN (continuing):

Q. Now, there's a section in there -- actually, if you go to page 2-14 on the bottom, I believe it's also if you have -- I think you have a Bates number at the bottom, I think it's Plaintiffs' 00002363.

A. I've got it.

Q. And there's a section there called Sports Wagering and it starts at the bottom of the first column. It says: Estimates of the scope of illegal sports betting in the United States range anywhere from 30 -- I'm sorry, 80 billion to 380 billion annually, making sports betting the most widespread and popular form of gambling in America."

If the National Gambling Impact Study Commission made these estimates, do you have any reason to dispute those estimates?

MR. MISHKIN: Object to the form of the question. It clearly doesn't say that, that the Commission's made that estimate.

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Q. If the Commission is reporting an estimate of 80 billion to \$380 billion annually, any reason to dispute that?

MR. MISHKIN: Object to the form.

Dispute what?

Q. Dispute the range of illegal sports gambling in the United States at this time, in 1999.

A. Same answer as I gave before. I have no particular information that would be contrary to this, but people sometimes get things wrong and I would imagine this is a very, very difficult market to estimate.

Q. Would numbers of that size surprise you at all, given your knowledge of sports gambling?

MR. MISHKIN: Object to the form.

Numbers of what size? The range?

Q. The range of 80 billion to \$380 billion of illegal sports gambling in the United States, would that surprise you?

A. I'm not sure how to react one way or the other.

Q. I assume you would agree with me

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which knows this area very well, believes strongly that there would be a dramatic increase in gambling if it were legalized in New Jersey.

Q. Do you know what your department of investigations' belief is based upon?

A. It's based on long careers of many people who work there and who know this area.

Q. Is your department of investigations' belief that there will be a dramatic increase in gambling following the legalization of sports gambling in New Jersey based on any empirical data?

A. I don't think I've seen any empirical data, but they have in their heads a tremendous amount of information about the world of gambling and the effects of gambling, legal and illegal.

Q. Does Major League Baseball know how much legal sports gambling occurs in Las Vegas?

A. I think you asked that already.

Q. Now I asked how much legal sports gambling occurs in the United States.

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that there's both legal and illegal sports gambling on sports, in general, in the United States?

MR. MISHKIN: It's been asked and answered. But you can answer it again.

A. Yes.

Q. Does Major League Baseball know how much legal sports gambling occurs in the United States?

A. I personally do not. I do not know if we have that figure.

Q. Does Major League Baseball have any studies or analyses regarding how much legal sports gambling occurs in the United States?

A. Same answer.

Q. Does Major League Baseball have any estimate of how much legal sports gambling would occur in the United States following New Jersey's legalization of sports gambling in New Jersey?

A. We have --

MR. MISHKIN: It's hypothetical, so I object to the form of the question.

A. Our department of investigations,

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A. Then I'll use the same answer.

Q. And what is that answer, sir?

THE WITNESS: Do you want to read back that answer.

(A discussion was held off the record.)

BY MR. HOFFMAN (continuing):

Q. Let me ask the question again: Does Major League Baseball know how much legal sports gambling occurs in Las Vegas?

A. I personally don't know. There may be somebody who has a very good idea.

Q. Who in Major League Baseball would have a good idea of how much legal sports gambling occurs in Las Vegas?

A. Maybe somebody in our department of investigations.

Q. Is there anyone in particular that might have that knowledge?

A. The head of the department perhaps, somebody working for them perhaps.

Q. Who is the head of your department of investigations?

A. His name is Dan Mullin.

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Q. How do you spell that last name?

A. M-U-L-L-I-N.

Q. Does Major League Baseball have any studies or analyses regarding how much legal sports gambling occurs in Las Vegas?

A. Same answer.

Q. When you say "same answer," you don't personally know but someone in the department of investigations may know?

A. Again, in their minds -- you say analyses. If there had been a particular study, we would have produced it. I don't think there's something in writing that you refer to. But in their minds, they have a good sense for this area.

Q. Does Major League Baseball agree that legal sports gambling in Las Vegas has gone up substantially over the last 20 years?

MR. MISHKIN: Object to the form of the question.

A. Again, I don't personally know what their business has been. I read somewhere that they were hit by the recession very badly so I don't know. But, again, that's got to be

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much legal sports gambling on Major League

Baseball games occurs in the United States?

A. Again, these are very repetitive. I'm going to incorporate the same answer about the whole country, which I think I've answered twice already.

Q. Does Major League Baseball have any studies or analyses regarding how much legal sports gambling on Major League Baseball games occurs in the United States?

A. Same answer.

Q. "Same answer" is you don't know?

A. No. Same answer that I gave before.

Q. Well, I think the answer you gave before--and, again, I don't want to mischaracterize your testimony--is that you personally don't know but the department of investigations may have a sense of how much legal sports gambling occurs on Major League Baseball games, but I don't think you're aware of any formal studies or analyses written down.

A. That's pretty close. You keep

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a matter of almost public record.

Q. Does Major League Baseball have any estimate of how much legal sports gambling would occur in Las Vegas following any legalization of sports gambling in New Jersey?

MR. MISHKIN: Object to the form of the question as lacking in foundation.

A. I'll give the same answer.

Q. Which is you don't know?

A. I personally don't know.

Q. What is Major League Baseball's position regarding legal sports gambling in Las Vegas?

A. We're opposed to it, strongly opposed to it.

Q. Has Major League Baseball tried to make sports gambling in Las Vegas illegal?

A. During the consideration of PASPA, we were hoping very much to see that happen, but it didn't happen.

Q. Do you think Las Vegas does a good job regulating sports gambling?

A. I don't have any sense.

Q. Does Major League Baseball know how

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saying studies or analyses in the same question. If there were a study that resulted in something in writing, you would have it as part of the discovery here. But the analysis or the analyses makes the question somewhat different.

Q. Okay. Does Major League Baseball have any estimate of how much legal sports gambling on Major League Baseball games would occur in the United States following the legalization of sports gambling in New Jersey?

A. It sounds so similar to the one you've already asked me. Again, our department of investigations believes there would be a very large increase if gambling were -- sports gambling were legalized in New Jersey.

Q. I'm not sure that entirely answers my question, Mr. Ostertag. Does Major League Baseball have an estimate of how much legal sports gambling would increase on Major League Baseball games?

MR. MISHKIN: Beyond the answer he's already given you?

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Q. Right. I understand you said that they think a very large increase, I think, was your testimony. Any actual estimate of how much it would increase?

A. I'll use the same answer I used before. I personally don't have one. It's possible that our department of investigations has a very good sense of it.

Q. Does Major League Baseball know how much legal sports gambling on Major League Baseball games occurs in Las Vegas?

A. Again, I feel like you've asked that question before and I feel like I've answered it. So I'll repeat the previous answer.

MR. MISHKIN: The problem is just the similarity in the questions and so perhaps we're hearing what sounds like the same question and you, in fact, have a different question in mind. You're going to have to make it sound different than this line of questions which is -- it's becoming very -- seemingly repetitive.

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to 380 billion. I personally don't. There may be somebody in our department of investigations who has a very good sense of it.

Q. Does Major League Baseball have any studies regarding how much illegal sports gambling occurs in the United States?

MR. MISHKIN: I'm quite sure it's been asked and answered. You're free to ask the questions in as many ways as you'd like, but I'm not sure you're going to be able to elicit very much if the questions continue to -- if they're making any distinctions at all, they seem to be making tiny distinctions.

Q. Does Major League Baseball know how much illegal sports gambling occurs in New Jersey?

A. Same answer.

Q. "Same answer" is that you personally don't know but someone in the department of investigations may have thought about this?

A. Well, I don't think "thought about

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Q. I'm using different words, believe me. Before I asked you about Major League Baseball's knowledge and estimates about legal sports gambling on sports. Now I'm focusing on Major League Baseball specifically.

A. I thought you already had but...

Q. Okay.

A. Same answer as sports.

Q. Does Major League Baseball know how much legal sports gambling on Major League Baseball games occurs in New Jersey?

A. How much legal gambling on baseball games occurs in New Jersey?

Q. Correct.

MR. MISHKIN: I'm going to object to the question.

A. It's illegal in New Jersey.

Q. Does Major League Baseball know how much illegal sports gambling occurs in the United States? I've shifted now from legal sports gambling to illegal sports gambling.

A. This is just a rewording of the question you asked before about the range of what it says here in front of me, 80 billion

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it" is the right way to put it; may have had information and a good sense of the amount.

Q. Does Major League Baseball have any studies regarding how much illegal sports gambling occurs in New Jersey?

MR. MISHKIN: Asked and answered.

A. I feel like it has been. I mean, you asked about studies and analyses, you know, and I gave an answer to that and now you're asking half that question. Are you going to ask analyses after that? I'm not sure I understand.

Q. I'm asking about whether or not you have any studies regarding how much illegal sports gambling occurs in New Jersey.

A. I'll incorporate the previous answer.

Q. Mr. Ostertag, you're a lawyer, correct?

A. Yes.

Q. Do you know what standing is?

A. Yes.

Q. What does it mean to you?

A. I didn't think I was here to answer

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2 legal questions.

3 MR. MISHKIN: Yeah, as a 30(b)(6)
4 witness, you can give your understanding
5 of standing.

6 A. My understanding is that it's the
7 legal ability to bring a lawsuit in a court.

8 Q. Now, do you understand that to
9 satisfy standing requirements, the Major
10 League Baseball is required to show that it
11 has been harmed or would be harmed by the New
12 Jersey sports gambling law?

13 MR. MISHKIN: Object to the form of
14 the question.

15 A. That's what I understand the
16 exercise is and as part of this litigation.

17 Q. You're prepared today to testify
18 about what harm the Major League Baseball
19 contends would result from New Jersey's sports
20 gambling law?

21 A. Yes.

22 MR. HOFFMAN: I'm going to
23 introduce Major League Baseball Exhibit 3
24 which is the Complaint.

25 (Exhibit 3: Complaint, was marked

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2 Q. Yes.

3 A. No.

4 Q. Again, if you could turn to page 3,
5 I'll focus your attention on paragraphs 5 and
6 6. And if you haven't already, if you could
7 briefly or take the time to read those two
8 paragraphs.

9 A. I read them.

10 Q. Okay. Now, do these two paragraphs
11 accurately summarize the harm that Major
12 League Baseball alleges in this case in
13 support of its standing to sue?

14 MR. MISHKIN: Object to the form.

15 A. The paragraphs are accurate.
16 Whether they are a summary, an accurate
17 summary, they certainly are accurate.

18 Q. Well, let me ask it this way: Is
19 Major League Baseball alleging any harms
20 resulting from the New Jersey gambling law
21 that aren't reflected in paragraphs 5 and 6 of
22 this Complaint?

23 A. You know, I'd have to go through in
24 my mind all the harms that I think would be a
25 result of the gambling law and compare them to

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2 for identification.)

3 BY MR. HOFFMAN (continuing):

4 Q. Now, feel free to review whatever
5 you want. My question is going to be focused
6 on paragraphs 5 and 6 on page 3.

7 Mr. Ostertag, do you recognize this
8 document?

9 A. Yes.

10 Q. Have you seen it before today?

11 A. Yes.

12 Q. Did you review this document before
13 it was filed?

14 A. Yes.

15 Q. Were you involved in the decision
16 to sue New Jersey?

17 A. Yes.

18 Q. Did you review the Complaint in
19 connection with your preparation for today's
20 deposition?

21 A. Apart from discussions with
22 counsel?

23 MR. MISHKIN: Apart from
24 discussions with counsel.

25 A. I'm asking for a clarification.

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2 what's listed here. There may be, there may
3 be other harms.

4 Q. Well, let's do that. Let's walk
5 through the harms alleged in these two
6 paragraphs. Starting with paragraph 5, this
7 paragraph seems to be alleging two types of
8 alleged harm: first, that sports gambling
9 causes participants in Major League Baseball
10 games to be involved in match-fixing; and,
11 two, that sports gaming causes the public to
12 perceive that Major League Baseball games are
13 being fixed.

14 MR. MISHKIN: Object to the form.

15 You're completely restating it. The
16 words are what they are, Mr. Hoffman.

17 Q. Mr. Ostertag, is one form of harm
18 that Major League Baseball is alleging that
19 sports gambling causes participants in Major
20 League Baseball games to become involved in
21 match-fixing?

22 MR. MISHKIN: Objection.

23 Q. I'm asking apart from the
24 paragraph.

25 MR. MISHKIN: Apart from the

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paragraph?

MR. HOFFMAN: Yes.

MR. MISHKIN: I'm sorry, let me have the question again.

(Requested portion read.)

A. Gambling on sports increases the possibility that those participating will be somehow involved in illicit activities involving those games.

Q. Is Major League Baseball alleging that one of the harms that Major League Baseball is alleging is that sports gambling causes the public to perceive that Major League Baseball games are being fixed?

MR. MISHKIN: Again, what's alleged in the lawsuit is really a matter for counsel. The witness can certainly be asked his understanding of what's being alleged. So I'd object to the question.

Q. Okay. What is your understanding of the harm being alleged by Major League Baseball?

A. The harm being alleged is that when there's gambling on games--and this could be a

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to do his best on the field in Major League Baseball as opposed to the game being some sort of device for others to win money.

It's also possible that gambling will increase the possibility that gamblers will seek inside information about the game, players, the health of players, any type of inside information that might be possible to assist in winning a bet on the game. The possibility of obtaining insider information can, in turn, cause corruption and involvement with the gamblers involved in gambling on the game who are often underworld figures and can lead to other problems for our players and others involved in the game, officials, et cetera. He have umpires, I see the word "referee" in something you handed me before. And that's just a partial list.

Q. Let me ask you about -- if you look at paragraph 6 of the Complaint, what is your understanding of this harm? It's the sentence that says: Once the reputations and goodwill have been compromised and the bonds of loyalty and devotion between fans and teams have been

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long answer; I'll do my best and I don't think I'll be able to cover all the harms--but the public could perceive that the result of the game has somehow been influenced by those gambling on the game, that individual acts in the game could somehow be influenced by those gambling on the game.

And I can just point to the Black Sox scandal where that actually happened in baseball and was a very painful experience for our sport. Gambling creates the risk that there is actually an effect and an influence on the result of the game but also the perception by the public that such an effect has occurred. It undermines and has the potential to undermine the very product we put out there, which is good, honest, fair competition.

It also creates the possibility that the public and members of the public and in particular youth perceive the game as a vehicle for winning money as opposed to, again, good, honest competition where the object is to win the game and for every player

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broken, Plaintiffs will have been irreparably injured in a manner that cannot be measured in dollars.

What is your understanding of that allegation of harm?

MR. MISHKIN: Well, object to the form of the question because it follows from several previous sentences. But you can answer the question if you can.

A. I believe that statement is absolutely true. It's one of those things where it only takes one problem to do enormous damage to a sport that sells itself as honest and whose product, again, is competition. We don't make widgets, we make competition.

The competition we make relies upon the public believing that it is honest, on the up and up, and involves everybody on both teams trying as hard as they can to win the game. And if the public develops any sort of doubt about that, it is the one thing that can undermine our sport and perhaps undermine it completely.

If there is a gambling scandal and

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the public no longer believes this sport is on the up and up, I hate to think of the results that could occur.

MR. HOFFMAN: All right. Well, we've been going for a little over an hour. Is now a good time for maybe a five-minute break?

(Recess taken: 10:36-10:43 a.m.)

BY MR. HOFFMAN (continuing):

Q. All right. Mr. Ostertag, before the break, you gave me what you said was a partial list of harms that Major League Baseball is alleging. Are there any other harms that Major League Baseball is alleging, other than the ones you identified in your previous answer?

MR. MISHKIN: And, Mr. Hoffman, also anything -- I mean, there are other documents. There are affidavits, there are declarations. So I'm not -- when you say beyond what Mr. Ostertag has testified to, there are things already in the record.

You're asking his understanding of

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gambling on sports. And we think that can change the nature of the way the sport is perceived. We hope it doesn't change the nature of the sport itself but that potential always exists.

Again, we had a terrible and painful incident in 1919 with a World Series that was thrown by one of the teams participating in it, and the sport was badly hurt at the time, extraordinarily badly hurt. And there were plenty of people who thought these games aren't on the up and up, there's a lot of gambling on them going on and, of course, it led to the creation of the office that I work for.

The idea that kids will get the message it's okay to gamble on sports, that's a horrible message to send to kids, absolutely horrible, and it's okay to walk into a gambling hall and place a bet on a professional sport. And whether there's an age limit or not, you and I both know kids will find a way to get in there. And even if they have to wait 'til a certain age, that age

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what's being alleged may not -- again, these are more legal issues. I don't object to your asking the 30(b)(6) witness' understanding of them, but I want to be clear that we're talking about his understanding.

MR. HOFFMAN: I understand. We're talking about his understanding.

BY MR. HOFFMAN (continuing):

Q. You said you gave me a partial list of the harm that will befall Major League Baseball. My question to you is: Based on your understanding -- I think we're entitled to the full list of harm based on your understanding. My question to you is: What else, other than the harms you've identified, do you understand to be harms that will befall Major League Baseball if sports gambling is legalized in New Jersey?

A. We think there's just a negative pall that it can cast over the sport through the official government sanction of gambling. You're talking about a situation where a government gives its official approval to

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clearly won't be older than college age. And to have college kids, the kinds of fans we want coming to our park to watch the game for what it is today, which is good, hard, honest competition and instead to watch it for the purpose of making money, that damages the sport.

It also can lead to other problems for kids. The people we want to become our fans -- one of the presidents of a team in baseball is a former chairman of an addiction center. And he believes strongly that legalizing gambling will just cause more people to become gamblers, and they may start out gambling legally but they then will graduate to illegal gambling inevitably because the winnings can be greater, the odds can be greater, you can receive credit through illegal bookmakers, and you can also hide from the tax authorities your winnings.

And to start kids down the road and -- even if they are older teenagers or young 20-something kids, to start them on the road to gambling and the possibility of

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gambling addiction and then involvement with illegal gambling and all the problems that can lead to through, again, I referred to undesirables before, it often leads to drugs and other illegal activity.

We think the whole idea is deplorable, absolutely deplorable, and we oppose it with every ounce of strength that we have.

Q. You just mentioned as part of your answer that one of the presidents of one of the Major League Baseball clubs is a former chairman of an addiction center; is that correct?

A. I think I've characterized that organization right. I don't have the exact title with me.

Q. Which baseball club is that?

A. Toronto Blue Jays.

Q. And what is the name of the president that you claim is a former chairman of an addiction center?

A. Paul Beeston.

Q. Can you spell that for me?

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Other than referring to his experience and belief that it would happen, did he refer to anything else?

A. I'm not sure what else he could have referred to, other than his experience. I mean, that covers an awful lot.

Q. I'd like to go through the types of harms you've alleged or Major League Baseball's alleged and your understanding of them. The first type of harm that I'd like to talk about is gambling allegedly causing participants in Major League Baseball games to become in match-fixing or inside information.

Can we -- if I use the term "match-fixing," can we understand that to include match-fixing and providing inside information to gamblers related to match-fixing?

A. We play games, not matches. But if you want to try to group those two together, I'll do my best.

Q. If you'd prefer me to refer to it as game-fixing, I'm happy to do so. We can do that.

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A. B-E-E-S-T-O-N.

Q. Have you personally talked to Paul Beeston about this?

A. Yes.

Q. And on what does he base his assessment that legalizing gambling will result in, I think in your words, kids graduating from legal to illegal gambling?

MR. MISHKIN: I object to the form of the question. I assume you're asking him whether he told Mr. Ostertag his basis.

MR. HOFFMAN: That's correct.

A. He referred to his experience as the chairman of his organization and his firm belief that would happen.

Q. Other than his experience and belief that it would happen, did he refer to anything else?

A. Well, his experiences and he made it sound like it was a very clear and obvious conclusion based on what he saw as chairman of this organization.

Q. But, again, let me ask it again:

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Mr. Ostertag, how would you define game-fixing?

A. I would define it as at least including participants trying to affect the outcome of the game other than through their 100 percent efforts to win the game.

Q. Would you also define match-fixing as any type of effort to influence the outcome of a game or a single play within a game that is related to gambling?

A. I'm not sure that I understood the end of that question. I thought I understood the first part of it.

Q. Let me break that apart.

Would you define game-fixing as any type of effort to influence the outcome of a game that is related to gambling?

A. The "related to gambling" part I'm not sure I understand or need to answer the question. I view game-fixing as any effort to influence the outcome of the game, again, other than a total and complete effort to try to win the game.

Q. Okay. Would you apply that same

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definition to a single play within the game?
So would you define game-fixing as a type of
effort to influence a single play within a
game?

A. I mean, I'm not -- the term
"game-fixing" might not perfectly fit that,
but it's improper, it's clearly improper if
you're not doing your best on a certain play
as a player.

Q. So, for example, the reason why I
asked for a single play, obviously there
are -- let me give you a hypothetical and I
want to see if you would include this in your
definition of game-fixing.

Let's say there is an over/under.
Do you understand the term over/under?

A. Yes.

Q. So total number of runs in a game.
And a particular player -- the outcome of the
game is not going to be affected. Let's say
one team that this player plays on, they're
ahead by six runs, it's bottom of the ninth
and they decide to affect the outcome of a
single play to prevent the total number of

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possibility of such a thing and also increase
the possibility that the public perceives that
as something that might be going on and
therefore undermine, once again, the product
that we sell, which is good, honest, hard
competition that is always on the up and up.

Q. Now, this is a hypothetical. If
the amount of sports gambling stayed the same
following legalization of sports gambling in
New Jersey, do you believe there would be an
increased possibility of game-fixing?

MR. MISHKIN: I'm going to object
because it is hypothetical. But you can
answer the hypothetical.

A. I don't believe that for a second,
so I don't know what to say.

Q. Why do you not believe that?

A. Because I believe legalized
gambling will create new gamblers in great
numbers and those gamblers will again
eventually become illegal gamblers in great
numbers.

Q. Mr. Ostertag, what's your basis for
that contention?

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runs from reaching the over, for example.

Do you understand my hypothetical?

A. Yes.

Q. Okay. Would you consider that
example an example of game-fixing?

A. I think in the broadest definition
-- well, I won't even say that. I think it
probably does qualify as game-fixing. One way
or the other, it is clearly improper, clearly
against our rules and clearly something that
we consider to be abhorrent.

Q. Now, is it your understanding that
Major League Baseball's contention in this
case is that New Jersey's legalization of
sports gambling would cause match-fixing in
Major League Baseball games?

MR. MISHKIN: Read the question
back.

(Requested portion read.)

MR. MISHKIN: Objection, lacks
foundation.

Q. You can answer.

A. We believe that the legalization of
gambling in New Jersey would increase the

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A. It's the belief of our department
of investigations. It's also the belief of
Paul Beeston.

Q. Do you know if the belief that
legalizing sports gambling will create new
gamblers is based on any -- let me focus on
the department of investigations first.

Do you know whether the belief of
your department of investigations that
legalization of sports gambling will result in
or increase new gamblers, is that based on any
empirical data?

A. My understanding is it's based on
their belief and their experience over their
entire careers and it's a fairly large
department. I believe every one of them has
the same opinion.

Q. And I think we already touched on
Mr. Beeston, but I think you already -- again,
correct me if I'm wrong. But his belief that
the legalization of sports gambling would
increase the number of new gamblers is based
on, again, belief and experience, not
empirical data?

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A. As far as I know. He's also, I should mention, the former president of Major League Baseball so he has that experience also.

Q. Mr. Ostertag, does Major League Baseball know how much game-fixing on Major League Baseball games occurs in the United States?

A. We hope there's not any, and I don't know that we believe that there is any. I haven't heard of that. But it is something that we guard against with every ounce of effort we have.

Q. Does Major League Baseball have any studies regarding how much game-fixing on Major League Baseball games occurs in the United States?

A. You know, I'm not sure how to answer that question. But I just said we don't believe anything -- I don't believe anybody in our organization thinks any has gone on since probably all the way back to the 1919 World Series. That was bad enough.

Q. Does Major League Baseball have any

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A. Yes, that's the answer I was referring to.

Q. Mr. Ostertag, is it possible that the amount of game-fixing would decrease by displacing illegal gambling and making gambling more transparent if sports gambling is legalized in New Jersey?

A. We think that notion is preposterous.

Q. Why do you say that?

A. Because the people who know about this in our office believe that it will increase the number of gamblers by large numbers.

Q. Just to confirm, Mr. Ostertag, Major League Baseball does not have any study in its possession showing one way or the other?

MR. MISHKIN: Again, it's entirely up to you but I think the answer you've gotten several times is if there were a study in the way I assume you mean it, it would have been produced. So the absence of any such production would kind of

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estimate of how much game-fixing on Major League Baseball games would occur in the United States if New Jersey legalized sports gambling?

MR. MISHKIN: Again, objection as a hypothetical.

A. I'm not sure anybody's thought ahead that far. Our purpose now is just to oppose this measure by New Jersey, to uphold -- see the statute that makes this illegal upheld.

Q. Does Major League Baseball have any estimate of how much game-fixing on Major League Baseball games would occur in the United States if all states were to legalize sports gambling?

A. Heaven forbid.

Q. I don't think that's an answer to my question. Are there any estimates of how much game-fixing on Major League Baseball games would occur?

A. Same as I gave before.

Q. Which is: I'm not sure that anybody's thought ahead that far?

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necessarily answer all of those questions.

MR. HOFFMAN: Okay. I'd still like to get an answer.

A. You know, it makes no sense whatsoever that people who are betting illegally earning more in their winnings, getting better odds or get better credit or credit at all and hiding their winnings from IRS and state tax authorities would switch to something that produces lower winnings and worse odds and no credit and income, if there is any income, that is fully taxable. It makes no sense whatsoever.

Q. I don't think that was my question, Mr. Ostertag. My question --

MR. MISHKIN: Counsel, it was his answer.

Q. Which did not answer my question. Let me reask the question.

I didn't ask whether or not you thought illegal gamblers would suddenly become legal gamblers if sports gambling was legalized in New Jersey.

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A. You asked if they would be replaced or displaced.

Q. No, I asked if -- is it possible that the amount of game-fixing would decrease by New Jersey legalizing sports gambling.

A. That wasn't the question you asked, but I recall hearing about a set of illegal gamblers being displaced by legal gamblers. And, again, I think the notion is preposterous, is my answer.

Q. The question I didn't get an answer to was: There is no study in Major League Baseball's possession showing one way or the other whether the amount of game-fixing would decrease if New Jersey legalized sports gambling?

A. I'll incorporate the previous answer that not having thought that far ahead, our purpose is to oppose what's going on here.

Q. Let's talk about the 1919 Black Sox incident. Can you describe for me what happened in 1919 related to what's referred to as the Black Sox.

A. It was unfortunately quite simple,

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White Sox agreed to this, to these payments, was because they were motivated by their dissatisfaction with their own compensation?

A. That's certainly part of the lore of that incident. Do I know that personally? I don't know. But certainly that's often said.

Q. Other than the 1919 Black Sox incident, can you identify any other specific incidents of game-fixing caused by sports gambling within the last 90 years?

A. I cannot, and we hope that none has occurred.

Q. Now I want to talk a little bit about a few of the other, I think, incidents you mentioned earlier that don't sound like they're related to game-fixing but they're related to gambling.

One is you referred to I think Pete Rose. Now, Pete Rose -- is it correct to say that Pete Rose gambled on baseball and admitted to betting on Reds games when he was the manager of the Reds, but there's no evidence that he bet against the Reds?

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something that can be repeated. Some gamblers who had money on the outcome of the World Series approached eight members of the Chicago White Sox when it won the American League pennant, were playing in the World Series, and offered them money to throw the series. And the series was thrown; the White Sox lost the series.

They were the far superior team people seemed to think at the time and they lost the series. And the series was lost because they didn't try their best, and it was a matter of connection to gamblers that caused that to happen.

Q. Now, this connection to gamblers, were these illegal gamblers?

A. Well, certainly some of the gambling they were doing was illegal. I don't know if there was any that was legal or not. I don't even know if there was legal gambling in the United States at the time.

Q. And is it accurate that at least reports I've read of the incident, that part of the reason that the eight members of the

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A. I believe both those statements are true.

Q. Any evidence that Pete Rose was involved in any game-fixing, as we've defined it earlier?

A. I don't think there was any evidence whatsoever that he was involved in game-fixing.

Q. Do you know whether Pete Rose was involved in legal gambling or illegal gambling?

A. Certainly much of his gambling was illegal. I believe -- I can't sit here and tell you that all of it was, however.

Q. Let me focus the question a little bit more. Do you know whether Pete Rose's sports gambling was legal or illegal?

A. Same answer.

Q. Another incident you mentioned was -- or another player you mentioned was Denny McLain. And I believe he thought he was involved in gamblers, but I think, as you put it, he may have been duped. Was Mr. McLain involved in any game-fixing?

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A. I don't believe there was any finding at all that he was involved in game-fixing or even any evidence. I read the decision this morning and I read it quickly, but my recollection of having looked at that file in the past is what I just said. I don't think there was any evidence whatsoever.

Q. Okay. Now, you touched briefly earlier on a matter involving George Steinbrenner and his payment of money to a gambler for information on Dave Winfield. Can you tell me a little bit more about that, please.

A. George Steinbrenner sought negative information about Dave Winfield or was offered negative information about Dave Winfield and for whatever reason he decided he would try to obtain it. And he did pay \$40,000 to someone for what was purported to be negative information about Dave Winfield.

Q. Any evidence that Mr. Steinbrenner or Mr. Winfield were involved in any game-fixing?

A. No, no, no. This whole matter did

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the 1943 season at a time when he said he didn't know it was against the rules.

Q. And, again, for that incident, no evidence that Mr. Cox was involved in any game-fixing?

A. There was no reference to that at all in the decision, and I don't know of any evidence, again, that he or anybody else at that time was involved in game-fixing.

Again, I don't believe we have any evidence, going back to 1919 to the Black Sox scandal, that any games were fixed or even attempted to be fixed.

Q. And during that time period, at least part of that time period--I apologize, I don't know exactly when sports gambling became legal in Nevada--but you would agree with me that at least for part of that period of time between 1919 and the present day, gambling was legal in Nevada?

A. Yes.

Q. During your tenure at Major League Baseball, have you been involved in any investigations into game-fixing?

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not involve gambling at all. It involved an incident with a gambler.

Q. Do you know if that gambler was -- was he involved in legal gambling or illegal gambling?

A. You know, my recollection is illegal, but I don't recall for sure.

Q. One other incident we briefly touched on earlier was William D. Cox. I believe you said he was the owner or at least part owner of the Philadelphia Phillies.

A. Right.

Q. And that involved gambling on baseball. Can you tell me a little bit more about what the allegations were in that case?

A. I think I told you what I knew. Again, I just read the decision this morning. I haven't gone through the whole file recently, and there was a reference to gambling in violation of Major League Rule 21. And I believe the subsection quoted in the decision referred to gambling on a team that one was involved with. And I believe Mr. Cox admitted betting on the Phillies for part of

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A. No.

Q. In your experience at Major League Baseball, have legal sportsbooks in Nevada helped to prevent or discourage game-fixing?

A. They helped to prevent? Are you asking my opinion?

Q. I'm asking your understanding, yes.

A. Again, my understanding I think completely comes from our department of investigations, and they would tell you that there's -- this is a negative, it is simply a negative when there's betting on sports. And maybe you ought to ask the question again. I'm not sure what the wording there was.

Q. Sure. Is it your understanding -- well, in your experience at Major League Baseball, is it your understanding that legal sportsbooks in Nevada have helped to prevent or discourage game-fixing?

A. I don't have any experience with the sportsbooks in Nevada, but it's hard to imagine getting to a positive answer to that question with anybody in our office.

Q. Do you know whether your department

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of investigations interacts with legal sportsbooks in Nevada?

A. They do not have any formal program or arrangement set up to interact with them. They will perhaps sometimes get a call or a tip, but there's no formal arrangement.

Q. So your department of investigation has received tips from legal sportsbooks in Nevada; is that correct?

A. It's at least possible, but I don't know for sure that they have.

Q. Who would know that? Who would know whether or not the department of investigations has received tips from legal sportsbooks in Nevada?

A. Again, the head of the department, Dan Mullin, would know.

Q. Mr. Ostertag, did you speak with Mr. Mullin or anybody in the department of investigations in preparation for today's deposition?

A. No.

Q. Do you have any other information about the tips regarding possible game-fixing

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especially the increase on the East Coast where there are a lot of teams and an awful lot of people, as opposed to Nevada where there are no teams and not nearly as many people, it's a negative as a bottom line. It's a big, big negative.

Again, I think you're implying that somehow we can benefit by receiving information from a sportsbook. Again, they're the ones creating the problem and then they're going to tell us about it? How is that a positive for us?

Q. Again, you referred to creating a problem. Let me make sure I'm clear on something.

Would you agree with me that illegal sports gambling existed prior to the legalization of sports gambling in Nevada?

A. I don't know exactly when it began in Nevada, but assuming it began in the last 75 years, then clearly, yes, because we were a victim once.

Q. And if sports gambling were made illegal across all 50 states, would you agree

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from legal sportsbooks in Nevada that you referred to?

MR. MISHKIN: Object to the form.

A. If I understood the question correctly, the answer is no.

Q. Does Major League Baseball believe that legal sportsbooks can be helpful in identifying potential instances of game-fixing?

A. We think the idea that any sportsbook can be helpful to us, again, is completely incorrect. It's almost like saying we'll create a problem and then we'll tell you about it. And how does that benefit us?

Q. Do you believe that legalized sports gambling in Nevada created a gambling problem?

A. I think legalized sports betting is a negative in Nevada the way it would be negative anywhere else. Do I think it has caused a fixing of our games? I do not. There's no information I have that has caused any fix. But I think that any gambling and especially the increase in gambling and

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with me that the potential would still exist for game-fixing in Major League Baseball?

A. Did you say legal or illegal, I'm sorry?

Q. If sports gambling were made illegal across all 50 states, would you agree with me that the potential for game-fixing would still exist within Major League Baseball?

A. Of course, the potential would be there for any sport. Again, we have the experience with the Black Sox. It actually happened to us.

Q. Now, I think as part of the harm you discussed earlier and we included within our definition of game-fixing was Major League Baseball players or employees providing inside information to gamblers. Is that correct?

A. That's a potential harm, absolutely.

Q. Okay. During the last 90 years since the Black Sox incident, do you have any instances or can you give me any examples of players or employees of Major League Baseball

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providing inside information to gamblers?

A. I cannot. And we hope it has never existed and never happened and we do not believe that it has. We have frankly done a very good job in preserving our sport as one that is honest and consists of good, clean competition.

Q. Any reason to think that following the legalization of sports gambling in New Jersey, that Major League Baseball would not do a very good job in preserving, as you put it, the sport as one that is honest and consists of good, clean competition?

A. We would certainly continue to do a good job. The problem is the risk is increased. You increase gambling, you increase the risk, especially when you make it so much closer to huge numbers of people and sports teams.

And, of course, there's also the possibility that if New Jersey is somehow able to legalize sports gambling in the face of this federal statute that says it's clearly illegal, well, other states are going to try

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Q. And again when you say inevitable, that's based on your experience and belief?

A. And commonsense.

Q. Commonsense, okay.

A. There's a free market out there and states will compete in it if they have to.

Q. Now, I want to talk -- I think another type of harm you touched on earlier was -- we're going to move from actual or the potential for game-fixing to the public perception of game-fixing, okay?

A. Yes.

Q. Now, would you agree with me, Mr. Ostertag, that that perception of game-fixing already exists for some portion of the public?

A. I'm not sure I could agree with that. You just don't see that written or stated by our fans or by sportswriters. It's one of the things that makes our sport so good right now; it is perceived as, once again, good, clean, honest hard competition. And you don't hear fans say, you know: I think the fix was in. You just don't hear that, and we are very happy not to hear that.

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the same thing in order to compete and keep up. New Jersey could be the first domino.

Q. Mr. Ostertag, do you have any evidence other than your belief that other states are going to try to do the same thing?

A. As a matter of fact, yes. I referred to our Delaware case three years ago where Delaware, in order to -- Delaware felt the competition from Maryland, as I understand it. This is now three years ago and I haven't given it a lot of thought since. But as I recall, the Maryland tracks instituted slot machines, and Delaware felt competition from that and, as a result, tried to institute single-game betting on sports, which was also a blatant violation of PASPA. And we sued them and stopped it.

Q. Okay. Other than Maryland and Delaware, any other evidence that other states will try to legalize sports gambling?

A. I believe there was talk of another state that was contiguous back three years ago. I don't recall for sure. It's inevitable, it's absolutely inevitable.

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Q. Do you hear fans questioning anything else about the honesty of Major League Baseball?

A. I don't.

Q. What is your understanding of the public's perception of performance-enhancing drugs in baseball, for example?

MR. MISHKIN: Object to the form of the question and it lacks foundation. You can answer it if you have an understanding.

A. Could you repeat it?

Q. Sure. You mentioned many times that Major League Baseball's perceived as a good, clean, honest, hard competition. My question is -- and that it's being maintained that way. Does the increased use of performance-enhancing drugs over the past 20 years, has -- in your opinion, has that affected the public's perception of Major League Baseball being good, clean, honest, hard competition?

A. It has nothing to do with game-fixing or players not trying their

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hardest. It's a whole different category.

Q. That's not my question. My question is whether or not the increase in performance-enhancing drugs use over the past 20 years has affected the public's perception that Major League Baseball is good, clean, honest, hard competition.

A. The use of performance-enhancing drugs was not a positive, that is for certain. But it has nothing to do with players not trying their hardest and game-fixing and something that could undermine more easily than any other event our sport.

Q. Do you believe the outcomes of Major League Baseball games have been affected by the use of performance-enhancing drugs over the past 20 years?

A. That's not my area, you know.

MR. MISHKIN: It would also be rather far outside the 30(b)(6) topics we're here to talk about.

Q. So you have no understanding as to whether or not -- no belief as to whether or not any games and the outcomes of any games

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but I'll ask you to read it again.

Q. Sure. Is it Major League Baseball's contention that the percentage of the public with the perception that Major League Baseball games might be fixed would go up if New Jersey legalized sports gambling?

MR. MISHKIN: Lacks foundation.

A. We think that's at least a risk. It's a risk we don't want to take, and it might very well happen if huge additional numbers of people are gambling on our games. That is a real risk.

Q. Does Major League Baseball have any consumer surveys or studies regarding the level of public perception of game-fixing?

MR. MISHKIN: Asked and answered.

A. I think so, also.

Q. I'm still entitled to an answer.

A. "I think also," just to be clear, was in response to asked and answered, not a yes answer to the question.

Q. It's probably -- look, I'm going to ask it again. If you'd just answer the question, it's probably going to be easier.

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over the past 20 years have been affected by performance-enhancing drugs?

MR. MISHKIN: It's been asked and answered and, Mr. Hoffman, it is outside of the 30(b)(6) topics. I've let you answer several questions about it. But when they get as repetitive as that last one was, I think -- I'm not going to direct the witness not to answer, but I think it's outside the reasons for being here.

Q. You can answer.

A. I'll incorporate my last answer.

Q. Your last answer was "that's not my area." So does that mean you have no opinion on that?

A. I'm not going to say anything more about that.

Q. Okay. Now, is it Major League Baseball's contention that the percentage of the public with a perception that Major League Baseball games might be fixed would go up if New Jersey legalized sports gambling?

A. I think I understood that question,

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Does Major League Baseball have any consumer surveys or studies regarding the level of public perception of game-fixing?

A. Not that I know of. And, again, our impression is there really isn't anybody out there who believes our games are fixed. We believe right now our game, our sport, is perceived as pure and honest and great competition.

Q. Mr. Ostertag, you say you believe right now that your game, your sport, is perceived as pure and honest and great competition. What do you base that belief on?

A. As far as the public perception, you might not be surprised to hear I read a lot of clips, reports, of all types written by baseball writers about our sport. I can't recall, in all my years in baseball, reading anything that suggests that someone believes that our sport is anything other than good, clean, honest competition and that players are trying 100 percent to win games. That's what writers think.

They will criticize a lot of things

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but they won't criticize that. They love the sport, they think the players are out there doing their best trying to win games. And that's what we want them to think because that's what's going on, as far as we know.

And I don't think -- you know, I'm not going to speak for the other sports, but fortunately I think they are pretty much in the same position. People believe the players on the team are trying to win games, and that's what we want.

Q. So just to be clear, you have not read anything in the media or sports literature from anyone suggesting that, for any reason, that Major League Baseball games are something other than honest competition?

MR. MISHKIN: Objection to the "for any reason."

A. What I talked about was players and teams trying 100 percent. And, again, I don't think I've read a single thing in all of my years in baseball or all my years reading baseball, which goes back far before I started working in baseball, that anybody thinks that

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understanding that Major League Baseball is alleging that sports gambling will diminish fan loyalty?

A. Once again, we think the risk exists that if there's gambling on baseball and if the perception by the fan base is that our sport is a vehicle to win money or lose money -- and there will be losers for sure, more losers than winners, who will be resentful from having lost. But one way or the other, if our sport becomes perceived as a vehicle to try to win money, it undermines what we're trying to sell and it is a clear negative to us.

Q. Is part of the concern that gamblers will be predicting outcomes of the games with their -- for lack of a better word, their brain instead of their heart?

MR. MISHKIN: Could you read that back, please.

(Requested portion read.)

MR. MISHKIN: I object to the form of the question. If you have an understanding of what Mr. Hoffman is

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teams and players aren't trying to win 100 percent. They are, and that's the perception. And once again, we're very, very happy that's the perception. We want to preserve it that way.

Q. And just to be clear, this perception that teams are trying 100 percent to win, that perception in your mind, that exists while sports gambling is legal in Nevada, correct?

A. Yes.

Q. And this perception that teams are trying to win 100 percent also exists with a -- we can argue about the size, but it exists with a substantial illegal sports gambling market. Would you agree with that?

A. Yes. You're calling it substantial. I said earlier in this deposition I don't know how to characterize it. But there is an illegal market for betting on sports, no question.

Q. I want to turn to a third type of harm which I think you talked about, and that is fan loyalty to teams. And is it you

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getting at, you can attempt to answer it.

A. Those wouldn't be the exact words I would choose, but I do see what you're getting at. And there is -- there is clearly some truth to what you're getting at in that our fans, we believe, predict the outcome of games, outcomes of games with their brains and their hearts and maybe other things, too, including superstitions and all the other things that baseball fans are influenced by; all positive influences, as a matter of fact.

But gamblers will look at our games as a way to make money, and that is not the way we want our game perceived and we think it has the risk of undermining what we sell.

Q. Is part of the concern also that sports gamblers will invest on the performance of players and teams and not necessarily whether the players or teams win or lose?

MR. MISHKIN: Object to the form.

Q. In other words, let me ask it a different way: Are you aware that gambling exists where bets are placed not on whether a team wins or loses?

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A. You know, my understanding of sports bidding is that it's betting on whether a team wins or loses.

Q. What about -- let me give you a hypothetical: Are you aware -- or let me ask you this way: Are you aware of that in Las Vegas, for example, you can gamble before the season starts on whether a particular team will win the World Series?

A. I believe I've read of those kinds of odds, so I guess the answer has to be yes, um-hmm.

Q. Okay. And another hypothetical we talked about earlier: Are you aware that at least in the legal sports gambling market, that gamblers can place bets on the number of runs that are -- total number of runs scored in a game, what's called the over/under?

A. You said in the illegal market?

Q. In the legal market.

A. I can't say that I've heard that. I've heard of that in other sports, but I'm not sure that I've ever heard of that in baseball.

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Q. Okay. So just to be clear, since 1995 Major League Baseball has not seen any diminishment in fan loyalty since that time and, in fact, it has seen what you would describe as an increase in fan loyalty in that time?

MR. MISHKIN: Object to the form of the question.

A. The word loyalty, you know, maybe I was answering the question that you previously asked about or having in mind more attendance, revenues and traditional measures of growth of the sport. Loyalty? If those -- if loyalty's an equivalent to attendance and the growth of the sport, then the answer is yes. If loyalty's some other concept, then I'm not sure how to answer it.

Q. Does Major League Baseball have any studies or surveys on which factors fans find important in terms of their loyalty to a particular team?

A. You're asking about a marketing question and I don't know.

Q. Now, you touched on this as part of

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Q. If we want to focus in on other sports, would you agree with me, though, that a bettor or a gambler betting on the over/under would not necessarily be predicting whether a team wins or loses?

A. You're asking me about other sports now?

Q. I'm asking you about other sports, yes.

A. It's hard for me to speak about other sports, but I think, you know, everybody knows there are such things as points that are given or taken in regard to some other sports, and there have been point-shaving scandals in some other sports.

Q. Has Major League Baseball seen any diminishment in fan loyalty over the past 20 years?

A. We believe the sport has grown extremely nicely in the past 20 years. Well, I'll put the point -- it's almost 20. I would say starting in -- starting probably in 1995 after our work stoppage, is the best starting point to measure it from.

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your earlier answer. But has attendance for Major League Baseball increased or decreased over the past 20 years?

A. Attendance has generally increased substantially over the past, again, I'll call it 17 years, since 1995. That's not to say that it's increased every one of those years. It has not.

Q. Okay. Does Major League Baseball have any studies of the impact that New Jersey's sports gambling law would have on attendance or ticket sales?

MR. MISHKIN: It's been asked and answered in various ways. But go ahead.

A. I don't know of any particular studies. I can tell you, though, we feel and fear that legalization of gambling in New Jersey would risk undermining the foundation of the sport and undermine what we are selling and therefore cause a decrease in the fan base that we want and an overall decrease in the fan base.

Q. Since 1995, has television ratings increased or decreased for Major League

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Baseball?

A. Since 1995 national television ratings--and this is a complicated subject--but if you're talking about, as an example post-season ratings, they have generally decreased along with the ratings of almost all sports and entertainment properties because of the fractionalization of the entertainment market and the number of different outlets there are now for viewers to watch.

Q. Since 1995 has broadcast revenue for Major League Baseball increased or decreased?

A. Increased.

Q. Since 1995 has total team revenue increased or decreased for Major League Baseball?

A. Increased. And, again, I'm answering generally.

Q. I think one of your earlier answers another form of harm you discussed was what you described as the negative pall that official government sanction of gambling would

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have to have been written down and you would have had it.

But the firm belief, based on experience of so many people who are in our department of investigations and elsewhere in our office, too, as a matter of fact, that an official sanction from the government, an official approval that gambling on baseball is okay would clearly have a negative effect on the sport is just undeniable.

Q. Now, Mr. Ostertag, is there anything else you're relying on in support of Major League Baseball's allegations of harm in this case?

MR. MISHKIN: His understanding, Counsel? Is that --

Q. Yes. What is your understanding of -- we've talked about various harms today. Is there anything else -- what is your understanding in terms of anything else that Major League Baseball is relying on in support of its harm allegations?

A. Sitting here today, I can't think of things other than what we've discussed.

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create. Is that accurate?

A. That sounds like what I said and I believe it, yes.

Q. Okay. What do you base that contention on?

A. It is my feeling--you asked my feeling and it's a feeling, I believe, from all of us in baseball--that if the government, any government, especially one so close to so many teams and so many residents, officially approve the idea of gambling on baseball, we think it would be a very negative thing for the perception of the sport and would cause the risk of all the things I've already outlined in this deposition.

Q. Do you have any empirical data to support that contention?

A. I think I've answered that a number of times and I will incorporate those answers.

Q. So the answer is no, you do not have any empirical data to support that contention?

A. If there's a formal study, you would have had it. The data, I guess, would

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There may be, but I can't think of it right now.

Q. What is Major League Baseball's official position on the use of odds or point spreads in the sports media?

MR. MISHKIN: Objection, lacks foundation. You can answer.

A. Our official position? I don't know if we've got one. I can't think of ever having heard any official position about that.

Q. Okay. Now, you're aware that there are many media outlets that post odds or point spreads regarding Major League Baseball games?

A. You know, I'm not sure how you define "many." Again, I've read more articles than you can imagine about the sport, and I never come across them. I just never come across odds.

I sometimes hear that a team is favored to win or is expected to win the World Series and other series, but I just don't see odds. Sometimes I hear about them in other sports and probably more frequently than about baseball.

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Q. Just to be clear, have you on any occasion seen odds or point spreads, run spreads, posted in the newspaper regarding Major League Baseball games?

A. On any occasion?

Q. On any occasion.

A. I recall when I was a kid seeing them in the New York Post all the time and not understanding them.

Q. Now, I think you touched on this, but stepping away from odds or point spreads, are you aware that various sports media makes predictions on the outcomes of Major League Baseball games in advance of those games?

A. That sports media makes predictions of outcomes? Of course, they all do. Well, I shouldn't say all but many, many sportscasters and baseball writers will state their belief as to who's going to win a series or even a game and their reasons for it. That's part of what pundits do. It is part of the dialogue of our sport.

Q. Does Major League Baseball actively discourage the sports media from making

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home page, there's a link to CBSSports.com. I think they're a partner for Fantasy Sports. Are you aware of that?

A. Yes.

Q. Now, are you also aware that CBSSports.com posts odds on Major League Baseball games?

A. No.

Q. If CBSSports.com did post odds on Major League Baseball games, is that something you would be concerned about it?

A. Are you asking about me, personally?

Q. I'm asking about you as a representative of Major League Baseball, as a 30(b)(6) witness.

A. I'm not sure how to answer it because I am assuming that it is not part of the relationship that our website has with CBSSports.com but is something that CBSSports.com just does itself. I don't know how to answer beyond that.

Q. Any concern that Major League Baseball would be perceived as endorsing the

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predictions on the outcomes of Major League Baseball games?

A. Making just predictions as to who's going to win?

Q. Predictions.

A. Of course, not.

Q. Does Major League Baseball actively discourage sports media from posting odds or point spreads for baseball?

A. That's similar to the question you asked before whether we have an official position, and I don't know of that. I just have never heard of any official position or any discouragement that we have --

Q. Now --

A. -- issued. I haven't finished my answer.

Q. I'm sorry.

A. -- that we have issued.

Again, in the context of if I don't see it much, there can't be a whole lot of it out there because of the amount that I read. I'm sure you can find it somewhere.

Q. Mr. Ostertag, on MLB.com's fantasy

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posting of odds if it is on the CBSSports.com website, which in itself is linked to MLB.com's fantasy website?

A. To answer that question, I'd really have to go on the sites and see exactly how it is done, how the connection is made, et cetera. I don't think I have enough information to answer that one way or the other.

But I can tell you that I haven't heard of anybody who has written or stated that that is somehow an official sanction of Major League Baseball of the posting of odds on CBSSports.com.

Q. Okay. So, again, let's take a hypothetical. If CBSSports.com has odds on Major League Baseball games posted and there's a link to CBSSports.com on Major League Baseball's fantasy home page, would you be concerned about any public perception that Major League Baseball is endorsing sports gambling?

A. Same answer as I gave before. I'd need to know more details before I could

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answer that intelligently.

Q. What more details do you need from my hypothetical before you can answer it?

A. I would need to see how close a connection it looked like. I'd like to know if what my experience is, the case is true with others, that nobody's seen anybody make that connection that somehow there is an official sanction of baseball, is there an official approval of ours to the posting of odds on CBSsports.com. There's a lot to be learned before I could answer that question.

Q. Mr. Ostertag, how would you define fantasy sports?

MR. MISHKIN: I'm quite sure this was directly asked and answered a while ago, but you can answer it.

A. Again, I've answered this in the context of not being a fantasy sports player ever, not once. But my understanding is that it involves the selection through a draft of individual players over all 30 teams in baseball--I'm taking baseball just as an example now--and assembling a team out of

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categories of people that come to mind: those who play and maybe have a lot of experience playing, and that would probably include people working in baseball and those not working in baseball. And the other category that comes to mind is those who work at MLB.com.

Q. Did you talk to anybody at MLB.com before today's deposition in preparation for today's deposition?

A. No.

Q. Mr. Ostertag, I know your knowledge of fantasy sports sounds limited, but would you at least agree with me that the outcome for fantasy sports is at least partially based on luck?

A. Again, I don't know how to answer that. I really don't know enough, I don't have a feel for a player. I'm one of those people that doesn't think a hole-in-one is lucky; I think a hole-in-one is skill but a very, very rare skill. I mean, somebody who shot a hole-in-one was trying, he was aiming at the hole. It happens very rarely.

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those players and then seeing how that team of this disparate group of 30 players performs against all of the teams in that particular league that one is playing in.

Q. Now, you would agree that some fantasy sports leagues do have entry fees?

A. Yes.

Q. Would you agree that there are often monetary prizes for winning fantasy leagues?

A. I think that's exactly right.

Q. Would you agree that success in fantasy sports tends to be a combination of both skill and luck?

A. Again, I haven't played. I'm not sure I have a good feel for what constitutes success.

Q. Who at Major League Baseball would have a better feel of whether fantasy sports tends to be a combination of both skill and luck?

MR. MISHKIN: Objection as lacking in foundation. But you can answer.

A. You know, I guess there are two

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Q. Let me ask it this way: Would you agree with me that no amount of research on an individual player can guarantee a certain outcome for that player?

A. That's hard to disagree with. Yeah, people are surprised by performances all the time.

Q. Now, based on your knowledge of fantasy sports, would you agree with me that participants in fantasy sports invest, whether it's money or energy or pride, on the performance of individual players and not whether a team wins or loses?

MR. MISHKIN: Object to the form of the question.

A. You have to repeat that for me.

Q. Okay. Would you agree with me that participants in fantasy sports invest, whether it's their money, their energy, their pride, on the performance of individual players and not on whether a team wins or loses?

A. When you refer to team, are you referring to a Major League Baseball team.

Q. I am.

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A. As opposed to a team that they assembled?

Q. I am.

A. Again, not having played but my understanding is that how well a fantasy team performs is a function of how well the individual players perform.

Q. And the corollary is not a function on whether a particular Major League Baseball team, how well they perform?

A. Correct. Of course, there can be correlation in that players perform well and the team therefore performs well.

Q. Does Major League Baseball support or sponsor fantasy baseball?

A. Earlier you said Major League Baseball referred to the Commissioner's office and the Commissioner's office is not involved in fantasy baseball.

Q. Who within Major League Baseball is involved in fantasy baseball?

A. Again, you used Major League Baseball. If you're talking about the entire industry and affiliated companies, once again,

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have any concern about Major League Baseball players participating in fantasy baseball?

A. Same answer.

Q. Would your answer change if there is an entry fee or a monetary prize for winning a fantasy league?

A. No. There's no connection -- my understanding is there's no connection between the fee and the prize. You can't choose to bet more to increase your winnings.

Q. So just to be clear, Major League Baseball does not have -- currently does not have any concern about Major League Baseball players participating in fantasy baseball even if the league has an entry fee or a monetary prize?

MR. MISHKIN: Mr. Hoffman, please

don't try to characterize the witness'

testimony. It's on the record. You can

ask a question, but what you did there

was just try to rephrase it and I object

to that.

Q. Okay. Well, let me ask the

question this way: Does Major League Baseball

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it's our website MLB.com, and the name of that company is MLB.com Advanced Media.

Q. What is the relationship between MLB Advanced Media and the Commissioner's office?

A. MLB Advanced Media is owned directly by the 30 clubs.

Q. Does Major League Baseball have any concern about Major League Baseball players participating in fantasy sports?

A. We don't have any policy against that, that I know of.

Q. Why not?

A. Because we consider fantasy sports to be far removed from gambling and I've never heard -- I started out this deposition saying that my responsibilities do not include player relations and labor and employment. I don't think there is any policy that prohibits players from playing fantasy sports, but I -- I always hesitate when I'm answering questions about employee relations matters.

Q. Now, I'm going to drill down a little bit more. Does Major League Baseball

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have any concern about Major League Baseball players participating in fantasy baseball if the fantasy baseball league has an entry fee or monetary prize for winning that league?

A. I gave you a careful answer to that question before. It was a combination maybe of two different questions, but I'll incorporate that answer by reference.

Q. Does Major League Baseball think that participation in fantasy sports can be a steppingstone to legal sports betting?

A. I've never heard that concern ever expressed. It's a whole different animal.

Q. Does Major League Baseball think that participation in fantasy sports can be a steppingstone to illegal sports betting?

A. Same answer.

Q. Has Major League Baseball conducted any studies of the impact of fantasy sports on fan loyalty?

A. Once again, that's more a marketing issue. I don't know.

Q. Has Major League Baseball conducted any studies of the impact on fantasy sports on

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attendance or ticket sales?

A. Same answer.

Q. Has Major League Baseball conducted any studies on the impact of fantasy sports on TV ratings?

A. Same answer.

Q. Has Major League Baseball conducted any studies of the impact of fantasy sports on broadcast revenue?

A. Same answer.

Q. Has Major League Baseball conducted any studies on the impact of fantasy sports on total team revenue?

A. Same answer.

MR. HOFFMAN: All right. I think we're up to Exhibit 4. I'm going to give you what's from MLB.com, Fantasy Baseball Official Rules, and we'll mark it Exhibit 4.

(Exhibit 4: MLB.com, Fantasy Baseball Official Rules, was marked for identification.)

BY MR. HOFFMAN (continuing):

Q. Now, if you just look at the front

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that has probably hundreds and hundreds of words in tiny print and pointing out the grand prize paragraph which is about a third of the way down the page, and you're asking me a question about this. It's completely out of context for me, and I've already forgotten your question.

Q. All right. Let me -- any concern that awarding a participant \$10,000 for winning a fantasy baseball contest would damage fan loyalty?

A. Once again, I'll refer to this as a marketing issue you're asking about and I don't know. But I would think it's quite clear that if we thought it would damage fan loyalty, it wouldn't be done.

Q. Any concern that MLB.com sponsoring a fantasy contest awarding a prize of \$10,000 would be perceived as a vehicle for winning money as opposed to honest competition?

MR. MISHKIN: Object to the form of the question.

A. That question I clearly don't understand.

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page there, MLB.com sponsored a fantasy baseball contest in 2012, correct?

A. It says that. I don't have independent knowledge. I mean, I hear of things they do from time to time, but I don't follow their fantasy games at all.

Q. If you could turn to page 11 of that document and it's Bates number 00004081, and if you look sort of in the middle of the page, there's a heading that says Grand Prize. Do you see that?

A. Yes.

Q. And here the grand prize winner of that fantasy baseball contest would receive 10,000 U.S. dollars. Correct?

A. Yes.

Q. Any concern that such a fantasy baseball contest would damage fan loyalty, in general?

A. This is a contest, right? I mean, just so it's clear what's happening here, you've put in front of me a document that is what, an inch and a half thick, maybe an inch thick, and you ask me to look at a page here

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Q. All right. Let me ask it again.

Is Major League Baseball concerned that a fantasy baseball contest that awards a grand prize of \$10,000 would be perceived as a vehicle for winning money as opposed to sponsoring honest competition?

MR. MISHKIN: Same objection to the form.

A. You're referring to competition among the 30 teams that constitute Major League Baseball on the field?

Q. Yes.

A. That there's a connection between this contest, that I will take your word for, involves a fantasy game as we described before, as you described and I discussed about picking individual players from teams and putting together a team, that this would undermine the concerns I expressed earlier?

Q. Yes.

A. I've never heard of any concern like that.

Q. Well, let me ask it this way: Earlier I think one of the harms you discussed

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was that legalizing sports gambling would create the perception that Major League Baseball would be viewed as a vehicle for winning money as opposed to a vehicle for honest competition. Am I accurately --

A. Yes. The games of our teams, the teams that constitute Major League Baseball, that was the concern I expressed.

Q. Any concern about sponsoring a fantasy baseball contest that awards a grand prize of \$10,000 would be perceived as a vehicle for winning money?

MR. MISHKIN: Asked and answered.

THE WITNESS: I think it has been.

Q. You can answer.

A. I'll give you the same answer. This is a fantasy game contest. It doesn't resemble gambling on teams that play games -- and I'm referring to teams now that constitute Major League Baseball, our 30 clubs. This is different. There isn't a connection between the two.

This is a fantasy team, it's make-up, it's made up, all right? It's

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winner of the game will win the National League West Division and the loser will miss the playoffs. Are you with me so far?

A. Yes.

Q. Let's also assume that I have -- Giants pitcher, Matt Cane, is on my team, my fantasy baseball team. And the way the statistics break out, if he pitches eight innings of shut-out baseball and strikes out at least ten batters, I'm going to win the fantasy contest and the grand prize of \$10,000. Are you still with me?

A. Yes.

Q. Would you agree that in this scenario where I am a Dodgers fan and I have Matt Cane on my fantasy baseball team, would you agree with me that that could result in shifting loyalties between my team and something other than my team?

MR. MISHKIN: You have my objection that it's hypothetical and I'm not sure what it adds but...

A. No, I won't agree with that. I think that's such an attenuated hypothetical

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pretend. And there's not a connection. This is a contest this isn't gambling. This is a contest. If this was gambling, I would assume it would be illegal under PASPA and probably other laws, too. This is a contest. And, again, it's a pretend team, it's not a real team.

Q. Any concern by Major League Baseball that a focus on a pretend team would damage the bonds of loyalty and devotion between fans and actual teams?

A. I would refer to that as a marketing issue that I don't know, but I certainly haven't heard of any concerns ever expressed.

Q. I'm going to pose the following hypothetical to you: Let's assume I'm a diehard Dodgers fan, which I actually am, but I'm also an avid fantasy baseball player. And I'm participating in Major League Baseball's fantasy baseball contest, okay?

A. Okay.

Q. Now, on the last day of the season, the Dodgers are playing the Giants and the

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that it doesn't get me anywhere and I don't think it will get you anywhere either.

Q. Okay. So in other words, you do not agree with me--or maybe you do agree with me--that I have an interest in rooting for an event that will hurt the Dodgers' chance of making the playoffs in my hypothetical?

MR. MISHKIN: Object to the form of the question. That's really not a question.

Q. Let me ask it again.

In the hypothetical I just posed to you, would you agree with me that I have a financial interest in rooting for an event that will hurt the Dodgers' chance of making the playoffs?

MR. MISHKIN: I'm going to object to the form of the question. There's a point at which you're arguing with the witness, which I think is beyond the permissible scope of the deposition and testimony, in general.

So, you know, with all the latitude you're entitled to here and we are going

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and have given you, I just want the record clear that with enough repetition, you're getting into simple argument which you can save for the Court.

Q. Do you need my question read back?

A. Yeah.

(Requested portion read.)

A. Without being a player of fantasy games, without being in a position myself ever, I don't know how to answer that question. I have no idea how a player would feel in that situation. I just don't know how to answer it.

Q. If you could turn to the first page of that document. Now, it's kind of hard to see but on the top of the first page, there appears to be some writing up towards the very top. Do you see that, to the right of Fantasy Baseball?

A. Um-hmm.

Q. And I'm not sure if your copy's as good as mine, but what it appears to say is Foxwoods. Do you see that?

A. Yes, um-hmm.

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MR. HOFFMAN: I'm going to introduce I think we're up to MLB Exhibit 5.

(Exhibit 5: NewsRoom article, was marked for identification.)

BY MR. HOFFMAN (continuing):

Q. If you need a minute or two to review, please do so.

A. (Examining document.)

Are you asking me to read all this?

Q. It's up to you. If you'd like to, I'm giving you the opportunity to.

MR. MISHKIN: Let me suggest you put your question and then we can --

MR. HOFFMAN: Sure.

Q. I'm going to point you to some various statements in this article. Specifically if you go to page 2.

MR. MISHKIN: Mr. Hoffman, one question I have: Was this produced to us prior to October 29th, 2012?

MR. HOFFMAN: I do not believe so, no.

MR. MISHKIN: Well, then you can't

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MR. MISHKIN: What page are we on?

MR. HOFFMAN: The very first page.

MR. MISHKIN: Yes.

Q. Now, do you know what Foxwoods refers to, Mr. Ostertag?

A. I think so. I haven't been there but I think so.

Q. And what does that refer to?

A. It's a complex in I believe it's Connecticut--it might be Rhode Island--of casinos, restaurants, hotels and maybe other things, too.

Q. Okay. So Foxwoods includes a casino; is that correct?

A. As far as I know, yes.

Q. Based on the fact Foxwoods appears on this MLB.com website, is Foxwoods a sponsor of MLB.com?

A. I don't have any information about that other than what you're showing me here.

Q. So any information on whether Foxwoods sponsored this particular fantasy baseball contest?

A. Same answer.

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rely on it.

MR. HOFFMAN: I can use whatever document I want to in a deposition.

MR. MISHKIN: No, no. You're relying on it for the basis of questions. That, to me, is in clear violation of the Court's order.

MR. HOFFMAN: We're going to agree to disagree on this. That's not what the Court's order is, to my understanding.

MR. MISHKIN: I'm reading it, I have it in front of me: Any documents in your possession, custody or control on which you intend to rely no later than October 29th and any later than that, you can't use it.

Okay, so you disagree with my reading. You have my objection that this is improper questioning and at the appropriate time, we'll move to strike it.

MR. HOFFMAN: Okay. That's fine.

BY MR. HOFFMAN (continuing):

Q. So if you can look at sort of in

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the middle of page 2, there's a sentence that starts: The NFL is not alone in condoning fantasy football.

A. I see that sentence.

Q. Okay. Then it says: Both Major League Baseball and the NBA say they have no issue with their athletes morphing into mock GMs and playing with fantasy sports teams.

And then we have a quote from MLB spokesman Rich Levin where he says: We have no problem with players participating. We're not concerned.

Do you agree with Mr. Levin's statement?

MR. MISHKIN: Object to the form of the question. As reported in this article.

A. Right. We have to assume first that the reporting is accurate and that the quote is accurate. But if you're asking me if I agree with Mr. Levin, it's the same answer I gave before to the effect of I don't believe we have any policies against players participating.

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Now, does that type of statement from an NFL player participating in a fantasy sports league concern Major League Baseball?

A. You know, same answer that I gave before. I can't really answer this. This is an article that has a quotation about somebody in another sport and people I don't know. I know Tom Brady, of course. You know, I don't know how to answer this. I do note the reference to the ugly, ugly situation about the Boston College gambling scandal up front. That's exactly what we're afraid of.

Q. Just to be clear, you have no reaction, whether positive or negative, to an NFL player saying: I can't be happy with him throwing a TD pass, but in the back of my mind I'm like, yeah, I just got six points in my fantasy league?

MR. MISHKIN: Object to the form of the question. The question to begin with, just to be clear, I'm now going to read -- you know, I'm not going to restate the answer. I object to -- the answer's in the record. So just put the

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But I was hesitant to give a definitive answer because it involves player relations and that's not my area. It sounds like Mr. Levin is confirming what I thought was the case, if this is an accurate quote.

Q. Okay. If you could go back to the first page and there's a statement again about halfway down the page. It starts with the statement: June and Cooley went on the record about their fantasy football passion.

A. Halfway down the first page?

Q. Yes.

A. Okay. I see the sentence.

Q. Okay. So it says: June and Cooley, who are two NFL players, went on the record about their fantasy football passion with June boasting about his fantasy 'Juneimus D' team featuring starting quarterback Tom Brady.

And then he's quoted by this reporter as saying: Playing New England I can't be happy with him throwing a TD pass, but in the back of my mind, I'm like, yeah, I just got six points in my fantasy league.

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question without trying to characterize what's in the record. With that objection, you can answer.

A. It's untrue that I had no reaction. What I said was I don't know how to answer the question and I don't. I can't get beyond the sentence that refers to the ugly, ugly situation.

Q. To your knowledge, has Major League Baseball taken any steps to police participation in fantasy sports by its athletes?

A. Same answer that I gave before.

Q. And you're not aware of any rules or guidelines prohibiting participation in fantasy baseball by Major League Baseball players?

A. Correct, I'm not aware of any.

Q. If you go to now the bottom of page 1, it starts with the statement: Las Vegas gambling experts. It's the third sentence from the bottom?

A. I see that.

Q. Okay. It says: Las Vegas gambling

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experts, however, see fantasy leagues in the same vein as your everyday casino patron placing a bet at the black jack table. It's gambling, pure and simple.

Do you agree with that?

A. No.

Q. Why not?

A. Because it's not gambling, pure and simple. And, you know, this is one reporter referring to Las Vegas gambling experts without any citation, throwing them all into one bundle apparently, and I can't even believe this sentence. But it is clearly not gambling, pure and simple.

Q. If you go to the next page, a gentleman by the name of Wayne Allyn Root, the chairman and CEO of Winning Edge International, a publicly traded sports handicapping website, it says: It's the same thing. You're betting money, you're gambling, wagering, investing on the performance of players and teams, not whether they win or lose.

Would you agree with that

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is not doing anything but arguing.

However, you can answer the question.

A. I don't view that as putting money at stake. There are fees and fees are different from wagers. And some fees are -- I think maybe all fees, based on my understanding, are paying for services. If you're playing in a fantasy league, somebody has to perform substantial services. And you can't decide you're going to pay a higher fee to increase your winnings in that league; you pay a fee that is set. And the winnings, as I understand them, are set and they're set before the league begins play.

This is not like going to a racetrack and having the odds change based on who's betting, having the payout change based on who's betting and how many people are betting and all sorts of other things where the payout depends entirely upon what you bet and what others bet. This is different. This is a fee with a prize, it's a contest. You used the word "contest" yourself earlier. You read from the MLB.com rules, the word was

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statement?

A. No, not at all.

Q. And why not?

A. For the same reason I gave before.

I can add to that answer that there's a reference here to teams. You're not gambling on the performance of our teams anyway, maybe these pretend teams but not our teams. If it were or if you were, it would be illegal except in those very few places like Las Vegas where it is legal.

Q. Would you agree with me that for fantasy sports--put teams to one side--that they are gambling on the performance of players?

A. I don't call that gambling.

Q. Are they putting money at stake based on the performance of individual players?

MR. MISHKIN: Objection. You're arguing with the witness. You can ask him a question and he can give you an answer. If you don't like the answer, raising your voice and stating it again

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contest. If it were gambling, it would be illegal. It's not, it's not illegal and it's not gambling. It's widespread and it's not gambling, it's a contest.

Q. If I place a legal bet on a Major League Baseball game in Las Vegas, am I understanding that you're saying that the payout could change based on others' activities?

A. Not having done it, I don't know for sure. I thought it did. And I am almost positive--in fact, I know because everybody watches horse races sometimes--those payouts do vary depending on how much money is bet and which horse it is bet on.

As far as the payouts changing in Las Vegas, I frankly would have thought the same thing there. Having not done it, I can't say that for sure. I don't know why you're asking me these questions, you know.

Q. I'm just trying to understand the distinction you're making between fantasy sports and legal sports gambling. So I guess -- and maybe you don't know the answer to

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1 this, but let me ask it this way: If I go to
 2 Las Vegas and place a bet on a particular team
 3 to win a game and the odds are set at let's
 4 say three to one, okay? And I --
 5 hypothetically let's say I bet \$100. Is it
 6 your understanding that that bet is now locked
 7 in and if I win the bet, I will win \$300; or
 8 is it your understanding that somehow the
 9 payout can change based on the activities of
 10 other gamblers?

12 A. You know, only for the purpose of
 13 trying to get this going--because I'm tempted
 14 to say, again, not having done it, I don't
 15 know--but I would have expected the second of
 16 those alternatives to be the truth, that the
 17 payout could change depending on what
 18 subsequent bettors bet.

19 Clearly, though, whether the odds
 20 change or not, your winnings, assuming you
 21 won, would change depending on how much money
 22 you put down. We're not talking about a
 23 contest that has a \$10,000 prize. You're not
 24 walking into a situation in that sportsbook
 25 where, if you put down ten dollars or a

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1 be looking for. Is that accurate?
 2
 3 A. You can certainly choose one that's
 4 free. But I also understand that there are
 5 different services provided. Sometimes
 6 they're bundled with -- I believe our website
 7 bundles -- one of them you pay a higher fee
 8 but you receive a package of our radio
 9 broadcasts.

10 Now, you're paying for something
 11 there. This isn't a wager, it's a purchase.

12 Q. Do you think that any gamblers who
 13 place legal sports bets in Nevada do so as
 14 part of the reason for entertainment value?

15 MR. MISHKIN: Objection to what he
 16 thinks other peoples' motivations are,
 17 but with that objection.

18 A. Again, never having done it, I
 19 can't venture down that path at all. I know
 20 that there are way too many gambling addicts
 21 and that's a problem.

22 MR. HOFFMAN: Well, I see that
 23 lunch has arrived. Is now a good time?

24 MR. MISHKIN: Sure.
 25 (Lunch recess taken 12:24 p.m.)

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1 hundred dollars or a thousand dollars and you
 2 win, you're going to win the same amount of
 3 money. You're not going to win the same
 4 amount of money; you're going to win a
 5 different amount of money. That's gambling.
 6 That's different than the fantasy contest
 7 we're talking about here.

9 Q. With fantasy sports players, they
 10 presumably would have the option of selecting
 11 from a number of different fantasy sports
 12 leagues, correct?

13 A. Sure.

14 Q. So they may select one that has a
 15 low entry fee or one that has a high entry fee
 16 and a larger payout; is that accurate?

17 A. That's my understanding. But,
 18 again, each individual prize is fixed. It
 19 doesn't depend on how much you decide to pay
 20 into this pool of money.

21 Q. Once you select the fantasy sports
 22 league you want to choose, it is fixed. But
 23 you have the option of, in advance of actually
 24 participating, selecting a fantasy sports
 25 league to get the kind of payout that you may

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AFTERNOON SESSION

(Resumed: 1:05 p.m.)

CONTINUED EXAMINATION

BY MR. HOFFMAN:

6 Q. All right. Mr. Ostertag, before we
 7 took our lunch break, we were talking about
 8 this newspaper article from 2006, and I just
 9 have a couple more questions.

10 Right after we were talking about a
 11 quote from Mr. Root where he says: You're
 12 betting money, you're gambling, wagering,
 13 investing on the performance of players and
 14 teams, and not whether they win or lose,
 15 unquote.

16 The next part of his quote, he says:
 17 If I bet on the Redskins plus 3 or plus 8,
 18 then I'm not betting on them to win, I'm
 19 betting on them to cover the point spread and
 20 the League frowns upon that. But if I'm
 21 betting on a certain Redskins player to gain
 22 100 yards today and that's my wish in the
 23 fantasy football league, it's the same thing.
 24 I don't care if the Redskins win. I'm
 25 cheering for that one player to get yards, and

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whether the team wins or loses means nothing to me.

Do you agree with that statement?

A. I'll give you the same answer I gave before. I don't know enough about fantasy sports. I don't have the right feel for answering a question as detailed as that.

Q. Okay. Who at Major League Baseball would be able to answer that in more detail?

A. I think I answered that also. I think there are probably two categories of people who know fantasy sports better than I do: those who play and those who work for MLB.com or some people at least that work for MLB.com.

Q. Is there somebody at MLB.com in particular that you can identify for us that would have more knowledge about Major League Baseball's position on fantasy sports?

A. No. I don't know the people who are behind this game.

MR. HOFFMAN: All right. I'd like to -- I think we're up to Exhibit 6, MLB Exhibit 6.

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Q. So would it be correct to say that this particular game focuses less on certain teams or cities but focuses more on the outcomes of individual at-bats?

A. It certainly appears that way from what's described here in the instructions or the rules or whatever you call these, how to play, the directions, I guess.

Q. Any concern by Major League Baseball that this sort of game or app would in any way damage the relationship between fans and teams?

A. You know, I'll give you the same answer: First, it's a marketing question. I don't -- I'm not a marketing person. But if anybody thought this would damage the relationship between fans and teams, I wouldn't think it would exist.

I also note here that it's free. It's just a game. You can make this up yourself. There's no money that's changing hands here.

Q. Mr. Ostertag, a couple of your answers you referred to -- that it's a

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(Exhibit 6: MLB PrePlay app

(#PLAINTIFFS' 00002208), was marked for identification.)

BY MR. HOFFMAN (continuing):

Q. This was a document produced by Major League Baseball in this action and it refers to what looks like an app, an application for iPad or an iPhone called MLB PrePlay. Do you see that?

A. Yes.

Q. Now, are you familiar at all with this app?

A. I think I heard something about this.

Q. Okay. What do you know about this MLB PrePlay app?

A. Nothing more than what I just read here.

Q. So according to this document, this is a game that allows fans to score points for correctly predicting the outcome of particular plays or at-bats. Is that accurate?

A. Well, I'm reading the same thing you are.

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marketing question. Who within marketing would be able to answer these questions in more detail?

A. I'm not sure. We have different parts of our marketing operation. We have a -- you know, a sponsorship group, an advertising group. I'm not really sure.

Q. Based on this document and what you know about this MLB -- PrePlay app, does this appear to be a game of skill, a game of luck or both?

MR. MISHKIN: Object to the form of the question.

A. And you're asking my opinion just based on reading the directions here?

Q. Yes.

A. You know, I guess my humble opinion would be it would be more a game of skill in predicting an outcome of something.

Q. And on what basis do you make that assessment?

A. I would think that the viewer would keep in mind the pitcher and the batter and perhaps know how well the batter does against

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the pitcher and make a prediction based on that and perhaps also the game situation.

But I -- you know, I take -- I have no expertise in this, I've never played this. I'm repeating myself. I've never played fantasy baseball before and so, you know, my opinion probably isn't worth anything.

Q. Based on what you know about MLB PrePlay and this document, does it appear that there's any way for a participant in this game to guarantee an outcome?

MR. MISHKIN: Object to the form of the question and lack of foundation.

A. I don't see any way somebody could guarantee an outcome.

MR. HOFFMAN: All right. I'll introduce MLB Exhibit 7.

(Exhibit 7: Official Rules 2012 MLB.com Odyssey (#PLAINTIFFS' 00002214-2218), was marked for identification.)

BY MR. HOFFMAN (continuing):

Q. So what I've handed you, Mr. Ostertag, is the official rules for another

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A. I see it.

Q. So based on your review of that first paragraph of this document, fair to say that fans in this game compete against other fans to predict which Major League Baseball team will win on a randomly assigned day?

A. Something like that. That's what it appears on first reading.

Q. So for this game, fans are making predictions on specific outcomes in order to win something of monetary value, correct?

A. It's a contest, yes.

Q. But, again, my question is: Fans here are making predictions on specific outcomes in order to win something of monetary value, correct?

MR. MISHKIN: Asked and answered.

A. I think I did answer that. It's certainly not gambling.

Q. Mr. Ostertag, do you know what the purpose of this contest is?

A. I don't know anything about this except the two paragraphs that I just read.

Q. And, again, who would know more

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MLB.com game called 2012 MLB.com Odyssey. Feel free to review if you'd like. Otherwise I can direct you to a specific portion.

A. Well, again, you've handed me something that's five or six pages, very, very small print and, in fact, every page after the first one is upside down. And I don't really -- if we can get to the questions without my reading all this --

Q. Sure. I think --

A. -- I'm willing to try.

Q. Here's what I suggest. Go ahead and read the first paragraph that I think outlines the nature of the game.

A. (Examining document.)

Okay.

Q. And if you could also turn to the third page, again, there's a section there called Grand Prize?

A. I can turn it right-side up. Okay.

Q. And it appears that the grand prize for this contest is three tickets to the 2013 MLB All Star game with an approximate retail value of \$500. Do you see that?

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about this contest at Major League Baseball?

A. Well, by your definition of Major League Baseball, I'm not sure anybody would, except perhaps somebody who's happened to have played it.

Q. Who at MLB.com knows more about this particular fantasy game?

A. Same answer I gave before. I do not know the people who are behind this.

Q. I show you what we're going to mark as MLB Exhibit 8.

(Exhibit 8: MLB.com Million Dollar Pick 'Em (#PLAINTIFFS' 00002211-2213), was marked for identification.)

BY MR. HOFFMAN (continuing):

Q. So this appears to be, again, an MLB.com contest called MLB.com Million Dollar Pick 'Em. And feel free to review, but in perusing this document, it appears that fans predict the winners of particular games on Tuesdays and Fridays for a grand prize of \$1 million and weekly prizes of a thousand dollars.

Mr. Ostertag, would you consider

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this a fantasy game?

A. I don't know.

Q. Well, if you look at the third paragraph with the title How to Enter, it says: During the promotion period, go to www.MLB.com/fantasy.

Would that indicate that MLB.com considers this a fantasy game?

A. Not necessarily to me.

Q. And why do you say that?

A. It doesn't call it a fantasy game.

Q. Do you have any knowledge that MLB.com puts non-fantasy games on their fantasy website?

A. I don't know one way or the other.

Q. And, again, for the purpose of this contest, fans were making predictions on specific outcomes of Major League Baseball games in order to win money. Is that correct?

A. That's what you told me. I haven't read this, but that's what you told me.

Q. Why don't you take a minute, then, to review the pertinent portions of the document, and then I can reask my questions.

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Q. Again, here I would direct your attention -- well, first let me ask this: Are you familiar with MLB.com Bingo?

A. No.

Q. Okay. If you take a look at page 2, again, there's a section there entitled How to Participate. If you want to take a moment to read that section, then I'll have a couple questions for you.

MR. MISHKIN: And, Mr. Hoffman, in which category of the 30(b)(6) topics is this?

MR. HOFFMAN: This is fantasy sports.

MR. MISHKIN: The two categories refer to fantasy sports--and we haven't established whether this is or isn't a fantasy sport--but the sport authorization and permission and the other one is impact or potential impact on... So which category does this go to?

MR. HOFFMAN: Well, it goes to both. And I'll point out that this is something you produced to us in response

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A. (Examining document.)

Can you direct me to a particular paragraph or two that might save both of us time?

Q. Sure. If you read the How to Participate paragraph, I think that will give you the gist, if you can. I know it's small.

A. (Examining document.)

I've got the general gist.

Q. Okay. So my question, Mr. Ostertag, is: For purposes of this particular game, fans were making predictions on specific outcomes on fantasy games in order to earn money; is that correct?

A. That's what it appears to be.

Q. I'm going to show you what we're going to mark as MLB Exhibit 9.

A. But let me add quickly, this is not gambling. There's no purchase necessary on those.

(Exhibit 9: MLB.com Bingo

(#PLAINTIFFS' 00004142-149), was marked for identification.)

BY MR. HOFFMAN (continuing):

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to our document request.

MR. MISHKIN: I understand. I'm asking which category.

MR. HOFFMAN: I think it goes to both categories.

A. (Examining document.)

I've got the general gist.

Q. Okay. So my understanding of this game is that this contest awards prizes based on the matching of tiles on fans' cards with the outcome of games. So, for example, if you have on a tile Josh Hamilton hits a double and he hits a double, then you get to place your tile on that card and it's similar to a regular game of Bingo going forward.

Is that your understanding?

A. That's what it appears to be.

Q. Okay. I'll also point out that this, I believe, was for post-season games only.

Now, this game involves randomly selected game outcomes for post-season game, correct?

A. Game outcomes?

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Q. Or play outcomes.

A. Yeah. Based on what I got out of skimming this paragraph, I thought it was more individual plays.

Q. Okay. So would you describe this as a game of chance?

A. I don't know enough about how this works. I don't know how the Bingo cards get passed, I don't know.

Q. Are you familiar with the normal game of Bingo?

A. Yes.

Q. Would you describe the normal game of Bingo as a game of chance?

A. Based on my memory of it, not having played it in decades, I think the answer is yes.

Q. Okay. Now, are you aware of a fantasy game on MLB.com called Free Agent Frenzy?

A. No.

Q. So you've not heard of this game where the object is to select the correct Major League Baseball team that you think each

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Q. If you could direct your attention to Section (a).

A. Um-hmm.

Q. So this section describes if a player or person connected with a Major League Baseball club promises or agrees to lose or attempt to lose or failed to give his best efforts towards the winning of any baseball game, and it goes on. But the potential punishment for that or the punishment for that, I should say, is to be declared permanently ineligible. Is that correct?

A. That's correct.

Q. On how many occasions has Major League Baseball permanently stripped eligibility under this rule?

A. I couldn't tell you. Exactly all eight of the Chicago White Sox players fall in that category. Pete Rose, by agreement, is in that category. There may have been a few others along the way, but I don't recall. There may have been. I just don't recall if there were some shortly after the Black Sox scandal.

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of ten selected free agents will sign with during the 2012-2013 season?

A. No.

Q. All right. I'm going to talk a little bit about topic 5 which are Major League Baseball's policies and practices regarding sports gambling.

MR. HOFFMAN: I'm going to mark --

I think we're up to Major League Baseball Exhibit 10.

(Exhibit 10: Rule 21 (#PLAINTIFFS' 00001798), was marked for identification)

BY MR. HOFFMAN (continuing):

Q. Now, I know, Mr. Ostertag, you referred to this -- I believe you referred to this Rule 21 earlier in the deposition. Is this something you're familiar with or would you like the opportunity to take a look?

A. I'm familiar with it. I can't tell you I'm familiar with every sentence right now. I'm happy to read through it again, but obviously I'm familiar with Rule 21. Most people in baseball have a familiarity with Rule 21.

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Q. Any other incidents that come to mind other than the Chicago White Sox and Pete Rose?

A. You're referring to subsection (a) here?

Q. Subsection (a), yes.

A. Again, nothing that comes to mind other than what I said before. There may have been one or two shortly after the 1919 Black Sox scandal.

Q. Any occasions during the past 20 years that Major League Baseball has permanently stripped eligibility under this rule?

A. 21(a)?

Q. 21(a), yes.

A. In the last 20 years? I can't think of any.

Q. How does Major League Baseball go about detecting violations of this Rule 21(a)?

A. Well, I referred earlier to our department of investigations. They have a number of staff people who are attuned to these kinds of potential problems at all

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times.

And there's also a network of what we call resident security agents, at least one per club, I think in most cases there's a primary and a backup. And they are often law enforcement officers frequently active, sometimes retired, and they know the community, they know the club, they know the area, and they know how to keep their ears to the ground. And that's just part of what that department does.

Q. Have you been involved in any investigations by the department of investigations during your tenure at Major League Baseball?

A. Yes.

Q. How many?

A. Well, there are different types of investigations, and your question was very broad. If you're asking about investigations relating to Rule 21(a) --

Q. That's what I'm asking, yes.

A. Then I think the answer is no.

Q. Do you know how many investigations

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recommended in the report produced by George Mitchell for our office.

Q. And what report are you referring to?

A. He did an investigation into the use of performance-enhancing substances in baseball and produced a written report with recommendations, and that was one of them.

Q. Okay. So your department of investigations it sounds like based on that that it investigates a wide variety of potential misconduct beyond Rule 21(a); is that fair?

A. Absolutely.

Q. And one thing it investigates is potential use of performance-enhancing substances; is that accurate?

A. Yes.

Q. Okay. Now, if you could look now at Rule 21 subsection (b). Do you know how many occasions -- on how many occasions Major League Baseball has stripped eligibility under this Rule 21(b)?

A. I don't know exactly. I believe

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over infractions of Rule 21(a) have occurred over the past 20 years?

A. That's really a question that I cannot answer. There are many, many investigations our department conducts that don't get to me.

Q. Do you have any estimate as to how many investigations have occurred in the past 20 years relating to Rule 21(a)?

A. No. And one clarification: This department doesn't go back 20 years. We also have a security department and that department does go back more than 20 years.

Q. How far back does your department of investigations go?

A. It was created, I believe, in or about 2008. It could possibly have been a year later than that, but it was somewhere around there.

Q. And do you know why it was created in 2008?

A. Yes.

Q. Why is that?

A. It was something that was

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there has been at least one player that came under this subsection, but I don't know for sure and I don't know exactly how many.

Q. The one player you have in mind, do you know who that player was?

MR. MISHKIN: Do we need to designate this "Highly Confidential"?

A. I cannot recall the player's name anyway. It was a long, long time ago.

Q. When you say long, long time ago, how far back would that have been?

A. I would think it was in the 1920s.

Q. So other than the incident that may have occurred in the 1920s, sitting here today, you can't recall any other incidents of someone being stripped of eligibility for violation of Rule 21(b)?

A. I cannot think of anybody else.

Q. And, again, how does Major League Baseball detect violations of this subsection of Rule 21, Rule 21(b)?

A. I will give you the same answer I gave with regard to 21(a).

Q. If you could now look to Rule 21

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subsection (c) entitled Gifts to Umpires. Do you know on how many occasions Major League Baseball has stripped eligibility under this subsection?

A. I can't think of any.

Q. And, again, is it your department of investigations that would go about detecting violations of this subsection of the rule?

A. Yes.

Q. If you go to subsection (d) entitled Gambling and specifically if you go to subsection (d)(1) which states: Any player, umpire or club or league official or employee who shall bet any sum whatsoever upon any baseball game connection with which the bettor has no duty to perform shall be declared ineligible for one year."

Do you know on how many occasions Major League Baseball has stripped eligibility under this subsection of the rule, subsection (d)(1)?

A. I couldn't tell you how many. But there have been some.

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Q. Any estimate of how many?

A. I don't think I could give you an estimate, but it's not a large number.

Q. So less than five?

A. I think to be safe I might say less than ten.

Q. Okay.

A. I probably would say fewer than ten.

Q. As you sit here today, do you have any knowledge of any specific incident?

A. Yes.

Q. And can you please describe that incident.

MR. MISHKIN: Well, before you do that, I just need to know whether we have to designate this portion of the transcript highly confidential. Is this anything recent, Tom?

THE WITNESS: Fairly recent, yes.

And I'm not going to describe any employee or the position. I will not name any names here.

MR. MISHKIN: Well, Mr. Hoffman,

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Q. Okay. Any estimate -- sorry.

A. I want to clarify that, that when the Commissioner takes action, assuming he takes an action with a written decision, that decision might or might not cite Rule 21(d)(1) or anything specific like that because the Commissioner also has best interest powers and it's possible those best interest powers were used to get to the same result.

Q. Okay. Do you have any estimate of how many players have been stripped of eligibility under this subsection (d)(1)?

A. Players only?

Q. Sure, we'll start with players.

A. I cannot think of any players who come under this.

Q. All right. How about any umpires? Have any umpires been stripped of eligibility under this subsection (d)(1)?

A. Not that I know of. I don't think there are any.

Q. And then finally how about any club or league officials or employees?

A. I think there have been some.

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what do you mean?

MR. HOFFMAN: Let me --

BY MR. HOFFMAN (continuing):

Q. We can move on.

And, again, for this subsection of the rule, you rely on your department of investigations to enforce subsection (d)(1)?

A. Not enforce, no. That's not the right word.

Q. I'm sorry, to investigate potential infractions of rule subsection (d)(1)?

A. Yes.

Q. If you look now to subsection (d)(2), which now specifically refers to any player, umpire or club or league official or employee who shall bet on any sum whatsoever upon any baseball game, in connection with which the bettor has a duty to perform, shall be declared permanently ineligible.

Other than the Pete Rose incident which we already discussed, are there any other occasions in which Major League Baseball has stripped eligibility under this subsection?

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MR. MISHKIN: Answer yes or no.

A. And just for clarification, we're putting aside the Black Sox scandal because that predated Rule 21.

Q. Yes. We can put aside both the Black Sox incident and Pete Rose. Other than those two incidents, do you know of any other occasions in which Major League Baseball has stripped eligibility under this subsection (d)(2)?

A. Yes.

Q. And how many incidents are you aware of?

A. Just sitting here now, I can think of only one, but I can't guarantee that it's only one.

Q. Okay. And is that one within the last 20 years, or is it something that occurred 50, 60, 70 years ago?

A. Closer to the latter.

Q. Okay. Can you, without breaching any confidentiality, describe that incident?

MR. MISHKIN: Well, Mr. Ostertag, unless this was public, we're going to

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refers to any player, umpire or club or league official or employee who places bets with illegal bookmakers or agents for illegal bookmakers shall be subject to such penalty as the Commissioner deems appropriate in light of the facts and circumstances of the conduct.

And it goes on to say: Any player, umpire, club or league official or employee who operates or works for an illegal bookmaking business shall be subject to a minimum of a one-year suspension by the Commissioner. And then it defines an illegal bookmaker.

A. Um-hmm.

Q. Do you know when subsection (d)(3) was added to Rule 21, if it was?

A. Yes, approximately.

Q. Okay. When was that?

A. Very recently, within the last 12 months.

Q. And why was this subsection added to Rule 21?

A. Just to clarify, it could have been the last 13 or 14 months but it was very

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either have to designate this highly confidential or else object that it's beyond the scope of the 30(b)(6) category number 5 which has to do with policies and practice and perhaps not their particular application.

But, Tom, what's your level of comfort? We can designate this portion of the transcript highly confidential and that's probably --

THE WITNESS: I don't think it's necessary. The person I have in mind is William D. Cox.

MR. HOFFMAN: Well, we already talked about him.

THE WITNESS: I'm confident that was very public.

BY MR. HOFFMAN (continuing):

Q. Okay. And, again, does Major League Baseball use its department of investigations to detect violations of this subsection, subsection (d)(2)?

A. Yes.

Q. And finally subsection (d)(3)

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recent. I can't speak to that with any authority. This is something that was done as part of the negotiations with our union, and it was agreed to as part of the new collective bargaining agreement that was reached last year.

Q. Anybody at Major League Baseball who can shed further light on the reasons why subsection (d)(3) was added to Rule 21?

A. Yes, probably so.

Q. And who would that be?

A. Lawyers in our labor group and, you know, maybe more than one.

Q. Can you identify any by name, please.

A. Dan Halem heads up that group, H-A-L-E-M.

Q. All right. I want to show you what we're going to mark as MLB Exhibit 11.

(Exhibit 11: Amendment to Rule 21 (d)(3) (#PLAINTIFFS' 00002219-225), was marked for identification.)

BY MR. HOFFMAN (continuing):

Q. So what I've handed you is a

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 2 memorandum that appears to describe the
 3 amendment to Rule 21 that we were just
 4 discussing, which is to subsection (d)(3). Is
 5 that correct?
 6 A. Yeah, um-hmm.
 7 Q. Okay. Now, if you look at the
 8 second paragraph here, it mentions that
 9 subsection (d) was previously titled Betting
 10 on Ball Games and says that this has been
 11 changed to Gambling and it has been
 12 supplemented with an additional clause which
 13 prohibits gambling with bookmakers.
 14 Mr. Ostertag, do you know why the
 15 name of the rule was changed from Betting on
 16 Ball Games to Gambling?
 17 A. Well, the rule clearly now is
 18 broader than betting on ball games.
 19 Q. Do you know why Major League
 20 Baseball singled out illegal bookmakers in
 21 this amended subsection?
 22 A. No.
 23 Q. Again, do you know who would know
 24 the answer to that question?
 25 A. I'll give you the same answer as I

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1 - T. OSTERTAG -
 2 Q. What about other forms of gambling?
 3 Does Major League Baseball make any
 4 distinction between sports gambling and other
 5 types of gambling? I'm talking about legal
 6 gambling now.
 7 A. Legal gambling. I would think that
 8 other types of legal gambling -- I'm not sure
 9 what you're referring to. But if you're
 10 referring to something like slot machines, I
 11 don't think we have much concern about legal
 12 slot machine playing. Again, if it became an
 13 issue in some way, the Commissioner would deal
 14 with that in his discretion.
 15 Q. But based on Major League Baseball
 16 Rule 21 (d)(3), is it accurate to say that
 17 Major League Baseball draws a distinction
 18 between legal and illegal sports gambling?
 19 A. No, I don't think that's fair at
 20 all. This refers specifically to illegal
 21 bookmakers.
 22 Q. Okay. Is there something in Rule
 23 21 that covers legal sports gambling?
 24 A. Clearly. Legal betting on baseball
 25 violates our rules.

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 2 gave before.
 3 Q. And that would be lawyers in your
 4 labor group, specifically Dan Halem?
 5 A. I would think he would know.
 6 Q. Do you know if this particular
 7 amendment to subsection (d)(3) of Rule 21,
 8 does this cover any gambling overseas where it
 9 is legal to gamble on sports?
 10 A. (d)(3)?
 11 Q. Correct.
 12 A. By its wording, it sounds like it
 13 would not, to me.
 14 Q. Can Major League Baseball players
 15 legally gamble on other sports other than
 16 Major League Baseball in Las Vegas?
 17 A. We do not have a specific rule
 18 about that, that I am aware of. But it's
 19 something that I think the Commissioner would
 20 take notice of if it became an issue in any
 21 way and would deal with it in the way he would
 22 view as appropriate.
 23 Q. And when, in your opinion, would it
 24 become an issue for the Commissioner?
 25 A. I would leave that to his judgment.

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 2 Q. Okay. Let's focus on sports other
 3 than baseball, okay? Under Major League
 4 Baseball Rule 21 (d)(3), it is a violation for
 5 a Major League Baseball player to gamble
 6 illegally with a bookmaker on other sports; is
 7 that correct?
 8 A. I think you reworded that rule a
 9 bit. It's not just places bets and not just
 10 gambles illegally but also acts as an agent
 11 for illegal bookmakers.
 12 Q. Okay, fair enough. So with that
 13 caveat --
 14 A. In addition to that, operates or
 15 works for any illegal bookmaking business.
 16 Q. Okay. So Major League Baseball
 17 Rule 21 (d)(3) makes it -- it's a violation of
 18 this rule for a Major League Baseball player
 19 to engage in sports gambling on other sports
 20 with anyone associated with an illegal
 21 bookmaker; is that fair?
 22 A. I think you said that accurately.
 23 That was a long sentence.
 24 Q. But as I see it, is there anything
 25 in Rule 21 or any other rule for Major League

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Baseball which prohibits any Major League
Baseball player, umpire or official from
placing a legal wager at a legal sportsbooks
on other sports other than Major League
Baseball?

A. I do not know any rule we have that
would prohibit that individual act.

Q. Now, since this rule was amended it
looks like probably in February 2012 time
period based on the date of the memo, has
Major League Baseball suspended anyone
pursuant to this subsection (d)(3)?

A. I don't know of anybody who has
been suspended subject to this section.

Q. And, again, would it be your
department of investigations that would be
responsible for detecting violations of this
subsection of Rule 21?

A. Yes.

MR. HOFFMAN: All right. I'm going
to show you what we're going to mark as
Major League Baseball Exhibit 12.
(Exhibit 12: Major League
Constitution Section 4 (#PLAINTIFFS'

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A. I'm not sure how to answer that.
There's a whole lot else that goes on in
baseball that's involved in our overall
efforts to keep the game as honest and pure as
possible. It's not just these two provisions.

Q. Other than Rule 21 and the Major
League Constitution which we just covered, are
there any other policies or procedures
designed to prevent game-fixing?

A. Again, it depends on how you look
at this. The Commissioner, as I mentioned
before, has best interest of baseball powers.
They are very comprehensive powers and they
most clearly could be used in this type of
situation.

Q. Okay. Other than the best interest
of baseball power that the Commissioner has,
are you aware of any other policies or
procedures designed to prevent game-fixing?

A. When you say "procedures," what are
you referring to?

Q. Any rules, anything written in a
memorandum, official rule, guidelines,
something written down to --

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00002226-228), was marked for
identification.)

BY MR. HOFFMAN (continuing):

Q. So Section 4 of the Major League
Constitution talks about the rights,
privileges and property rights of a Major
League club and that they may be terminated if
a club offers, agrees, conspires or attempts
to lose any game, or fails to suspend
immediately any player, employer, officer who
shall be proved guilty of offering, agreeing
conspiring or attempting to lose any game.

Has Major League Baseball ever
invoked this section of the Major League
Baseball constitution?

A. Just for clarity, you referred to
this as Section 4; it's Article XIII, Section
4.

Q. My apologies.

A. And the answer is no.

Q. Now, in the view of Major League
Baseball, are Rule 21 and this section, this
article and section of the Major League
Constitution, sufficient to deter game-fixing?

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A. Procedure meaning a practice of a
department or something like that?

Q. We can first -- let's focus on a
formal written product. Are you aware of any
written documents that outline policies
designed to deter game-fixing?

A. I can't think of any sitting here.

Q. Okay. Now, you touched on
procedures, meaning a practice of your
department. What were you referring to there?

A. Our department of investigations
and all the things that they do.

Q. Other than the department of
investigations, any other department that
would be involved in investigating or
detering game-fixing?

A. It's possible that our security
department might get involved in something
some day. I don't know that -- there was a
time when it was just the security department
that had both functions. And as a result,
it's possible that something would come to
their attention or for some other reason they
would be in a position to hear about something

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and could follow up on it themselves; refer it also, I would hope, to the department of investigations but somehow be involved. That's possible.

Q. Now, you referred to the best interest of baseball powers of the Commissioner. Is that something that's in the Major League Baseball Constitution?

A. Yes.

Q. I'll refer to that as the best interest provision. Has Major League Baseball invoked the best interest provision to strip anyone of eligibility related to any gambling activities?

A. This is the same answer that I gave before from a different direction when you asked about Rule 21. There have been actions taken by Commissioners that might have referred to the best interest powers rather than Rule 21 or vice versa. I just don't know for sure.

Q. Let me ask it this way: Are there any other instances, other than the ones we've talked about today, where the Commissioner

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not something I've read in a while, but I think it's the association with and as far as I can recall nothing more.

Q. Does Major League Baseball, other than Rule 21 and the Major League Constitution, does Major League Baseball have any pamphlets or materials they distribute to their players regarding antigambling?

A. Major League Baseball conducts, in conjunction with the players association, an elaborate multi-day seminar for rookies on an annual basis. It's called the Rookie Career Development Program. And among the many topics it covers to help rookies get acclimated to the major leagues is the topic of gambling. And they go through an awful lot of information on the hazards of gambling, the problems that can be caused to players, their finances, their families, their marriages and the game of baseball through gambling.

I can tell you I recall seeing a videotape once that somehow displayed, you know, someone who befriended a player, gave a player a ride home once or something; and

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invoked the best interest provision as opposed to Rule 21 and thus has not been covered during today's deposition?

A. In the area of gambling?

Q. In the area of gambling.

A. I can think of one.

Q. Okay. What is that incident?

A. Well, since you're a fan of the Dodgers, you may know that their manager in 1947 was suspended for the entire year for associating with I'm quite sure they were gamblers, they were undesirables of some sort.

MR. MISHKIN: But he wasn't in Los Angeles at the time.

A. But he wasn't in Los Angeles at the time.

Q. Do you recall the name of the Dodgers manager?

A. Leo Derosier.

Q. And, again, that incident simply involved someone associating themselves with illegal gamblers as opposed to any game-fixing or betting on baseball itself?

A. I'm quite sure that's right. It's

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through just, you know, small steps they became friends. And six or nine months into the friendship, this friend revealed to the player that he was a member of the mob and that he, the player, as a result had been consorting with the mob for six or nine months. And if that player didn't provide inside information, the member of the mob would reveal the fact the player had been consorting with the mob and different scenarios like that.

It's a very hard-hitting, well-received set of presentations as part of, again, a multi-day seminar-type program that is conducted for rookies.

Q. Okay. Are these presentations recorded anywhere?

A. I don't know.

Q. Do you know if there are any written materials relating to these programs?

A. I don't know that either. I haven't seen any in recent years.

Q. Do you know if these presentations make any distinction between illegal and legal

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gambling?

A. I don't know.

Q. Do you know why Major League Baseball does not prohibit all forms of sports gambling?

A. I don't have any knowledge of that one way or the other.

Q. Do you know who would have knowledge of that?

A. If I don't, I doubt there's anybody else who would have any better knowledge.

Q. The rules we've covered, Rule 21 and the Constitution -- or let's focus on Rule 21. I assume Rule 21 does not address sports gambling outside of the United States where it's legal; is that correct?

A. I wouldn't think that's correct at all.

Q. Okay. Let me ask it this way: Does Rule 21 address sports gambling on sports other than baseball in countries outside of the United States where sports gambling is legal?

A. I think it does, yes.

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would be a difference between gambling on other sports in Las Vegas and gambling on other sports in England. But clearly Leo Derosier, had he been consorting with mobsters in London rather than wherever he did it, it wouldn't have made any difference in my opinion.

Q. Now, do you know anything about the gambling regime, if you will, in -- legal sports gambling regime in Canada?

A. Yes, I know something about that.

Q. Okay. What can you tell me about that?

MR. MISHKIN: Object to the form.

Can you make it a little bit more specific.

Q. Sure. Is sports gambling legal in Canada?

A. Sports gambling in Canada involving parlay betting is legal.

Q. And what is your definition of parlay betting?

A. Multiple games, you have to pick multiple games at the same time.

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Q. And where does it address that?

A. In subsection (f).

Q. Would a Major League Baseball player -- let's take Canada. Are you aware, Mr. Ostertag, that sports gambling is legal in Canada, some provinces of Canada?

MR. MISHKIN: Object to the form of the question. It's a little more complicated than that.

Q. Okay. Well, let's -- we don't have to complicate it. Are you aware that it is -- let's take the United Kingdom, okay. Are you aware that it is legal to bet on sports in the United Kingdom?

A. I don't know much about the United Kingdom in any detail, but I understand that the betting laws are more liberal than they are here.

Q. Would this best interest of baseball provision of Rule 21(f) that you just pointed me to, would that address a situation where a Major League Baseball player gambled on other sports in the United Kingdom?

A. I believe -- I don't think there

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Q. Does Major League Baseball have any policies prohibiting parlay betting in Canada on other sports for its employees?

A. On other sports, you're asking if someone could legally bet in a parlay format in Canada on, say, hockey?

Q. Correct.

A. We do not have a specific rule against that, I do not believe. But I would add that, again, the Commissioner could deal with this, if it became a problem in some way, in his discretion.

Q. And do you have any idea of when it would become a problem in his discretion, or is that something you would ask Mr. Selig?

A. I would leave that to his discretion, again.

Q. Does Major League Baseball have any partnerships with casinos?

A. When you say "partnerships," what do you mean?

Q. Any agreements of any sort with casinos.

A. Does Major League Baseball, meaning

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the Commissioner's office?

Q. We'll start with the Commissioner's office, sure.

A. I do not believe we have any.

Q. How about Major League clubs, do they have any partnerships or agreements with casinos?

A. There are some teams that have advertising sponsorship promotional agreements with casinos that do not have sportsbooks.

Q. What is Major League Baseball's policy on the clubs' agreements with casinos, if you know?

A. Oh, I know. It's a little complicated but, in summary, there are certain advertisements, sponsorships and promotions that are acceptable and there are certain ones that are not. We draw lines in that area.

Q. And what lines do you draw?

A. Again, it's complicated. But to give you an example, teams are generally not allowed to use their names and logos in conjunction with the casino name and logo -- I probably should say casino name or logo.

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Q. Do you happen to know what percentage of Major League Baseball clubs have an advertisement deal with a casino?

A. I don't.

Q. Now, I think you mentioned City Field. I assume you're referring to the marketing and promotional partnership with Harrah's that the Mets have; is that correct?

A. I think it's Caesars. And maybe I'm forgetting the possibility they're co-owned, but clearly the branding is Caesars.

Q. You're right. The naming and branding rights is to the Caesars club, but I think it's through Harrah's. But I could be wrong.

Are you aware that Harrah's purchased the right to make to fan offers for stays in Atlantic City at City Field?

A. I -- there was probably a time -- in fact, there was a time that I reviewed that contract. I couldn't have told you that detail today, however.

Q. Is there anything else you can tell me about the partnership between the Mets and

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In other words, accepting an ad-- and you can see these ads in various places-- including City Field is generally okay, but having that ad and having the name or the logo of the casino juxtaposed to the name or logo of the team is not okay. That's one example.

Q. Does Major League Baseball have any concern at all about a casino advertising at a Major League Baseball stadium being somehow associated with Major League Baseball? Any concern about fan perception of Major League Baseball's association with gambling based on casino advertisements?

A. Again, we have concerns and we've -- those concerns have been manifested in a set of regulations that draw lines in certain places. The most solid line that we draw is that if the casino conducts sports bidding, it cannot have that association, period, end of game.

For those that don't have sports betting, there are more detailed and more subtle lines that are drawn that we believe are appropriate for the circumstances.

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Harrah's through the signage at City Field?

A. No.

Q. Okay.

A. There is one actually, in fact. We insist that the general branding for Caesars-- and it doesn't have to be every single reference in the ballpark--but the general branding be Atlantic City so that nobody thinks the Caesars in Las Vegas is somehow involved. Another example of keeping sports betting completely out of the picture.

Q. Now, does Major League Baseball have any policies prohibiting Major League Baseball owners from having any stakes in any casinos?

A. Yes.

Q. Do you know what rule or policy that is?

A. It's a policy that we have that prohibits owners from owning any part of a casino. There is a de minimus threshold, but generally it's a flat prohibition.

Q. Okay. Now, are you familiar with Detroit Tigers owner Mike Ilitch? Am I

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1 pronouncing that correct?

2 A. Yes.

3 Q. Now, my understanding is his wife,
4 Marian Illitch, became the owner of Detroit's
5 MotorCity Casino. Are you aware of that?

6 A. Yes.

7 Q. Does Major League Baseball have any
8 concerns about that relationship?

9 A. Marian Illitch doesn't own the
10 Tigers and Michael Illitch doesn't own the
11 casino. It's a situation that I don't think
12 we're going to allow again, but it exists
13 today and goes back a long time.

14 Q. When you say you won't allow it
15 again, why is that?

16 A. We've just made the decision that a
17 spouse will not be able to play the same sort
18 of role in the future.

19 Q. Has Major League Baseball, during
20 the past ten years, ever reassessed its
21 position on gambling?

22 A. Apart from what we've talked about?
23 Because there was amendment to Rule 21 that we
24 just talked about.
25

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1 So it wasn't -- the situation was
2 not that we were sitting in our offices making
3 decisions on the operations of the team. We
4 were not. We arranged it, we set it up, but
5 then it was operated by the people we hire.

6 Q. Okay. Now, were you aware during
7 the time period -- keeping what you had in
8 mind about how the operation worked, keeping
9 all that in mind, were you aware that during
10 that time period that the Expos were operated
11 by Major League Baseball, that the Expos had
12 an online casino as a main sponsor?

13 A. No. And if we had known about it,
14 assuming what you're saying is true, we would
15 have ended it immediately.

16 Q. Now, Mr. Ostertag, are you aware
17 that the Las Vegas Convention & Visitors
18 Authority is a sponsor for several Major
19 League Baseball teams?

20 A. No. But I can tell you that if
21 it's the case, this is something we have
22 considered and we have not specifically
23 prohibited that organization from advertising.
24 I mentioned before we do a lot of line drawing
25

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1 Q. Sure, other than the amendment to
2 Rule 21 (d)(3).

3 A. Our advertising guidelines that you
4 were asking me about a second ago were last
5 issued as a complete document in December of
6 2002. So I guess that comes within ten years,
7 just barely.

8 Q. Anything else?

9 A. We've had some amendments along the
10 way, some supplements to the 2002 guidelines,
11 two or three that I can think of.

12 Q. Now, prior to their move to
13 Washington, the Montreal Expos were, for a
14 time period, operated by Major League
15 Baseball; is that correct?

16 A. Yes.

17 Q. Now, are you aware that --

18 A. Let me just clarify that. When you
19 say "operated," they were owned by an entity
20 that was owned by the other 29 teams, and the
21 operation was actually insulated from Major
22 League Baseball to a great extent because we
23 wanted the decisions made by people we hired
24 to run the team.
25

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1 and we have -- we've permitted that
2 organization to advertise. It doesn't
3 represent only casinos in Las Vegas; it
4 represents all of entertainment in the entire
5 Las Vegas area.

6 Q. So no concern about the potential
7 public association between Major League
8 Baseball clubs and Las Vegas, in general?

9 A. I didn't say we didn't have any
10 concern. We drew the line in such a place
11 that we did not prohibit the Las Vegas
12 Convention & Visitors Association from
13 advertising.

14 Q. Do you think it's possible that
15 members of the public might perceive that
16 sponsorship by the Las Vegas Convention &
17 Visitors Authority as an implicit sponsorship
18 of gambling?

19 MR. MISHKIN: Object to the form of
20 the question.

21 A. We intended it to not be that, we
22 hope it's not that, and we haven't had any
23 particular problems with the way we've drawn
24 the lines so far.
25

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Q. Mr. Ostertag, are you aware that at a point in time, the Arizona Diamondbacks Internet site contained a link with the Las Vegas Authority's home page which itself included a page on sportsbooks?

A. No. There -- once in a while there's a problem that arises that we rectify as soon as we find out about it. If that were true, if that was true--I don't think I recall ever knowing that--but we would change that as fast as we could change it.

Q. Okay. So hypothetically if you click -- if you're on the Arizona Diamondbacks Internet site and you click on the link to the Las Vegas Authority's home page and you go to the Las Vegas Authority's home page and there is a Diamondbacks logo and a gaming guide appearing side by side, would that be a concern?

A. Would you repeat that?

Q. Sure. So you talked earlier about keeping logos away from casinos. If you were to click on the link to the Las Vegas Authorities home page from the Arizona

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declaration?

A. Yes.

Q. Have you discussed this declaration with Commissioner Selig?

A. Yes.

Q. And other than conversations with counsel, what did you discuss regarding this declaration with Commissioner Selig?

MR. MISHKIN: That's a difficult question because Mr. Ostertag is himself counsel and plays that role. So I think I'm going to instruct him not to discuss his conversations with Commissioner Selig about the preparation of the document to be submitted in litigation.

Q. Are you going to follow that instruction?

A. Yes.

Q. Mr. Ostertag, were you ever asked by your outside counsel to preserve your records for this matter?

A. Yes.

Q. Have you erased or thrown away any files, e-mails, text, voicemails or any other

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Diamondbacks website and you found a gaming guide appearing side by side with the Diamondbacks logo, would that be a concern?

A. I think it would be. I might need to see it. I probably would need to see it and I would personally call the club. As you described it, I think the answer is yes.

Q. Now, I'd like to show you what we're going to mark as Exhibit -- I think we're up to MLB Exhibit 13.

(Exhibit 13: Declaration of Allan

H. Selig in Support of Plaintiffs' Motion For Summary Judgment, was marked for identification.)

BY MR. HOFFMAN (continuing):

Q. What I've handed you is the Declaration of Allan H. Selig in Support of Plaintiffs' Motion For Summary Judgment and, If Necessary, to Preserve the Status Quo, a Preliminary Injunction.

Mr. Ostertag, have you seen this document before?

A. Yes.

Q. Did you help prepare this

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documents related to this matter since you instigated this litigation?

A. No.

MR. HOFFMAN: I don't have any further questions.

MR. MISHKIN: Thank you, Counsel. And I have none.

(Time noted: 2:25 p.m.)

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STATE OF NEW YORK)
) ss:
 COUNTY OF NEW YORK)

I, THOMAS OSTERTAG, the witness
 herein, having read the foregoing testimony of
 the pages of this deposition, do hereby
 certify it to be a true and correct
 transcript, subject to the corrections, if
 any, shown on the attached page.

THOMAS OSTERTAG

Sworn and subscribed to
 before me this _____ day
 of _____, 2012.

NOTARY PUBLIC

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EXHIBITS (continued):

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Exhibit 10: Rule 21 (#PLAINTIFFS' 00001798)	146
Exhibit 11: Amendment to Rule 21 (d) (3) (#PLAINTIFFS' 00002219-225)	160
Exhibit 12: Major League Constitution Section 4 (#PLAINTIFFS' 00002226-228)	165
Exhibit 13: Declaration of Allan H. Selig in Support of Plaintiffs' Motion For Summary Judgment	186

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Exhibit 2:	National Gambling Impact Study Commission Report 1999 (#PLAINTIFFS' 00002333-606)	27
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 DEPOSITION DATE: NOVEMBER 6, 2012
 DEPONENT: THOMAS OSTERTAG

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THOMAS OSTERTAG

SUBSCRIBED AND SWORN TO BEFORE ME
 THIS _____ DAY OF _____, 20____.

(NOTARY PUBLIC) MY COMMISSION EXPIRES:

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C E R T I F I C A T I O N

I, Sherri Flagg, a Registered
Professional Reporter, Certified LiveNote
Reporter, and a Notary Public, do hereby certify
that the foregoing witness, THOMAS OSTERTAG, was
duly sworn on the date indicated and that the
foregoing is a true and accurate transcription
of my stenographic notes.

I further certify that I am not
employed by nor related to any party to this
action.

Dated this 8th day of November, 2012.

Sherri Flagg, RPR, CLR